

ARKANSAS REPORTS
VOLUME 325

ARKANSAS
APPELLATE REPORTS
VOLUME 54

*[T]he law is the last result of human
wisdom acting upon human experience
for the benefit of the public.*

— SAMUEL JOHNSON
(1709-1784)

THIS BOOK CONTAINS THE OFFICIAL
ARKANSAS REPORTS

Volume 325

CASES DETERMINED
IN THE

Supreme Court
of Arkansas

FROM
May 31, 1996 — September 16, 1996
INCLUSIVE¹

AND

ARKANSAS APPELLATE
REPORTS

Volume 54

CASES DETERMINED
IN THE

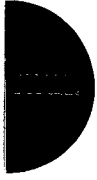
Court of Appeals
of Arkansas

FROM
May 29, 1996 — September 11, 1996
INCLUSIVE²

PUBLISHED BY THE
STATE OF ARKANSAS
1996

¹Arkansas Supreme Court cases (ARKANSAS REPORTS) are in the front section, pages 1 through 523. Cite as 325 Ark. __ (1996).

²Arkansas Court of Appeals cases (ARKANSAS APPELLATE REPORTS) are in the back section, pages 1 through 405. Cite as 54 Ark. App. __ (1996).



Set in Bembo

DARBY PRINTING COMPANY
6215 PURDUE DRIVE
ATLANTA, GEORGIA 30336
1996

ARKANSAS
REPORTS

Volume 325

CASES DETERMINED
IN THE

Supreme Court
of Arkansas

FROM
May 31, 1996 — September 16, 1996
INCLUSIVE

WILLIAM B. JONES, JR.
REPORTER OF DECISIONS

CINDY M. ENGLISH
ASSISTANT
REPORTER OF DECISIONS

PUBLISHED BY THE
STATE OF ARKANSAS
1996

CONTENTS

	Page
JUSTICES AND OFFICERS OF THE SUPREME COURT	v
TABLE OF CASES REPORTED	
Alphabetical	vi
Opinions by Respective Justices of Supreme Court, Per Curiam Opinions, and Per Curiam Orders Adopting or Amending Rules, etc.	xiv
STANDARDS FOR PUBLICATION OF OPINIONS	
Rule 5-2, Rules of the Supreme Court and Court of Appeals	xviii
TABLE OF OPINIONS NOT REPORTED	xx
OPINIONS REPORTED	1
APPENDIX	
Rules Adopted or Amended by Per Curiam Orders	525
Appointments to Committees	543
INDEX	
Alphabetical Headnote Index	545
References to Acts, Codes, Constitutional Provisions, Rules, and Statutes	561

JUSTICES AND OFFICERS
OF THE
SUPREME COURT OF
ARKANSAS

DURING THE PERIOD COVERED
BY THIS VOLUME
(May 31, 1996 —
September 16, 1996, inclusive)

JUSTICES

BRADLEY D. JESSON	Chief Justice
ROBERT H. DUDLEY	Justice
DAVID NEWBERN	Justice
TOM GLAZE	Justice
DONALD L. CORBIN	Justice
ROBERT L. BROWN	Justice
ANDREE LAYTON ROAF	Justice

OFFICERS

WINSTON BRYANT	Attorney General
LESLIE W. STEEN	Clerk
JACQUELINE S. WRIGHT	Librarian
WILLIAM B. JONES, JR.	Reporter of Decisions

TABLE OF CASES REPORTED

A

Abernathy <i>v.</i> State	61
Anselmo <i>v.</i> Tuck	211
Arkansas Dep't of Human Servs. <i>v.</i> Estate of Lewis	20
Arkansas Oklahoma Gas Corp. (Southwestern Glass Co. <i>v.</i>)...	378
Arkansas State Highway and Transp. Dep't (Files <i>v.</i>).....	291
Arnold <i>v.</i> State.....	444
Avett <i>v.</i> State.....	320

B

Baker Car & Truck Rental, Inc. <i>v.</i> City of Little Rock	357
Barnes <i>v.</i> State	59
Benton <i>v.</i> State	246
Bill Fitts Auto Sales, Inc. <i>v.</i> Daniels	51
Boral Gypsum, Inc. <i>v.</i> Leathers	272
Bowden, Lamont <i>v.</i> State.....	95
Bowden, Lamont <i>v.</i> State.....	316
Bradford <i>v.</i> State.....	278
Branch <i>v.</i> State.....	41
Brooks <i>v.</i> State.....	520
Brown <i>v.</i> State	504

C

Carroll <i>v.</i> State.....	249
Carter <i>v.</i> State	477
Choate <i>v.</i> State	251
Citizens to Establish a Reform Party <i>v.</i> Priest	257
City of Little Rock (Baker Car & Truck Rental, Inc. <i>v.</i>).....	357
Colonia Underwriters Ins. Co. <i>v.</i> Richardson.....	300

D

Daffron <i>v.</i> State	411
-------------------------------	-----

Daniels (Bill Fitts Auto Sales, Inc. <i>v.</i>)	51
Davis, Gary Duaine <i>v.</i> State	194
Davis, Lynn O. <i>v.</i> State	96
Davis, Robert Lee <i>v.</i> State	36
Dillon <i>v.</i> Twin City Bank	309
Donihoo <i>v.</i> State	483

E

ER Arkansas, P.A. (Randolph <i>v.</i>)	373
Esmeyer <i>v.</i> State	491
Estate of Wells (Wells <i>v.</i>)	16
Estate of Lewis (Arkansas Dep't of Human Servs. <i>v.</i>)	20
Evans, Timothy G. <i>v.</i> State	191
Evans, Timothy G. <i>v.</i> State	414

F

Ferrell <i>v.</i> State	455
Firemen's Ins. Co. (R. J. "Bob" Jones Excavating Contr., Inc. <i>v.</i>)	42
Files <i>v.</i> Arkansas State Highway and Transp. Dep't	291
First Nat'l Bank (Pearson <i>v.</i>)	127
Flemings <i>v.</i> Littles	367
Florence <i>v.</i> Taylor	443
Florence <i>v.</i> Taylor	445
Friday (Stoltz <i>v.</i>)	399

G

Gansky <i>v.</i> Hi-Tech Eng'g	163
Gardner <i>v.</i> Rogers	415
Guss <i>v.</i> State	521

H

Hawkins Constr. Co. <i>v.</i> Maxell	133
Helton <i>v.</i> State	140
Hi-Tech Eng'g (Gansky <i>v.</i>)	163
Hicks <i>v.</i> State	192

Hill <i>v</i> State	419
Hilstrom, Keith Cox <i>v</i> State	26
Hilstrom, Keith Cox <i>v</i> State	317

I

In Re: Arkansas State Board of Law Examiners	544
In Re: Board of Certified Court Reporter Examiners	543
In Re: Civil Practice Committee Appointments	543
In Re: Client Security Fund Committee Appointments	544
In Re: Rules Governing Admission to the Bar	538
In Re: Supreme Court Rule 1-2	525
In Re: Supreme Court Rule 1-2 and Rules of Appellate Procedure	534

J

Jackson <i>v</i> State	27
Jackson <i>v</i> Tucker	318
Jacobs <i>v</i> State	30
Johnson, Larry <i>v</i> State	417
Johnson, Reginald <i>v</i> State	44
Johnson, Wilford Gene <i>v</i> State	197
Jones <i>v</i> State	451

K

Kennedy <i>v</i> State	3
Key <i>v</i> State	73
King <i>v</i> State	313
Kingsbury <i>v</i> Robertson	12

L

Lakeview Country Club, Inc. <i>v</i> Superior Prods.	218
Leathers (Boral Gypsum, Inc. <i>v</i>)	272
Lee <i>v</i> State	452
Littles (Flemings <i>v</i>)	367

M

Malone <i>v.</i> Trans-States Lines, Inc.	383
Maxell (Hawkins Constr. Co. <i>v.</i>)	133
May (Owens <i>v.</i>)	454
McCoy <i>v.</i> State	155
McCready <i>v.</i> State	418
McGarrah (McGarrah <i>v.</i>)	81
McGarrah <i>v.</i> McGarrah	81
McPeck <i>v.</i> White River Lodge Enters.	68
Mid-State Constr. & Materials, Inc. (Pledger <i>v.</i>)	388
Moncrief <i>v.</i> State	173
Moore <i>v.</i> State	468
Mosley <i>v.</i> State	469

N

National Bank of Commerce <i>v.</i> Quirk	31
Nichols <i>v.</i> Wray	326
Norman <i>v.</i> State	1

O

Owens <i>v.</i> May	454
Owens, Billy <i>v.</i> State	93
Owens, Gary Dean <i>v.</i> State	110

P

Parkman (State <i>v.</i>)	35
Pearson <i>v.</i> First Nat'l Bank	127
Pledger <i>v.</i> Mid-State Constr. & Materials, Inc.	388
POM, Inc. <i>v.</i> Taylor	334
Priest (Citizens to Establish a Reform Party <i>v.</i>)	257

Q

Quirk (National Bank of Commerce <i>v.</i>)	31
--	----

R

R. J. "Bob" Jones Excavating Contr., Inc. <i>v.</i>	
Firemen's Ins. Co.	42
Randolph <i>v.</i> ER Arkansas, P.A.	373
Rayford <i>v.</i> State	33
Reece <i>v.</i> State	465
Richardson (Colonia Underwriters Ins. Co. <i>v.</i>)	300
Robertson (Kingsbury <i>v.</i>)	12
Rogers (Gardner <i>v.</i>)	415
Rogers <i>v.</i> Tudor Ins. Co.	226

S

Sanson <i>v.</i> State	60
Scott <i>v.</i> State	267
Sebastian Lake Pub. Util. Co. <i>v.</i> Sebastian Lake Realty	85
Sebastian Lake Realty (Sebastian Lake Pub. Util. Co. <i>v.</i>)	85
Slocum <i>v.</i> State	38
Smith <i>v.</i> State	34
Southwestern Glass Co. <i>v.</i> Arkansas Oklahoma Gas Corp.	378
State (Abernathy <i>v.</i>)	61
State (Arnold <i>v.</i>)	444
State (Avett <i>v.</i>)	320
State (Barnes <i>v.</i>)	59
State (Benton <i>v.</i>)	246
State (Bowden, Lamont <i>v.</i>)	316
State (Bowden, Lamont <i>v.</i>)	95
State (Branch <i>v.</i>)	410
State (Brooks <i>v.</i>)	520
State (Brown <i>v.</i>)	504
State (Bradford <i>v.</i>)	278
State (Carroll <i>v.</i>)	249
State (Carter <i>v.</i>)	477
State (Choate <i>v.</i>)	251
State (Daffron <i>v.</i>)	411
State (Davis, Gary Duaine <i>v.</i>)	194
State (Davis, Lynn O. <i>v.</i>)	96
State (Davis, Robert Lee <i>v.</i>)	36
State (Donihoo <i>v.</i>)	483

State (Evans, Timothy G. <i>v.</i>)	191
State (Evans, Timothy G. <i>v.</i>)	414
State (Esmeyer <i>v.</i>)	491
State (Ferrell <i>v.</i>)	455
State (Guss <i>v.</i>)	521
State (Helton <i>v.</i>)	140
State (Hicks <i>v.</i>)	192
State (Hilstrom, Keith Cox <i>v.</i>)	26
State (Hilstrom, Keith Cox <i>v.</i>)	317
State (Hill <i>v.</i>)	419
State (Jackson <i>v.</i>)	27
State (Jacobs <i>v.</i>)	30
State (Jones <i>v.</i>)	451
State (Johnson, Larry <i>v.</i>)	417
State (Johnson, Reginald <i>v.</i>)	44
State (Johnson, Wilford Gene <i>v.</i>)	197
State (Kennedy <i>v.</i>)	3
State (Key <i>v.</i>)	73
State (King <i>v.</i>)	313
State (Lee <i>v.</i>)	452
State (McCoy <i>v.</i>)	155
State (McCready <i>v.</i>)	418
State (Moncrief <i>v.</i>)	173
State (Moore <i>v.</i>)	468
State (Mosley <i>v.</i>)	469
State (Norman <i>v.</i>)	1
State (Owens, Billy <i>v.</i>)	93
State (Owens, Gary Dean <i>v.</i>)	110
State <i>v.</i> Parkman	35
State (Rayford <i>v.</i>)	33
State (Reece <i>v.</i>)	465
State (Sanson <i>v.</i>)	60
State (Scott <i>v.</i>)	267
State (Slocum <i>v.</i>)	38
State (Smith <i>v.</i>)	34
State <i>v.</i> Staton	341
State (Tanner <i>v.</i>)	453
State (Turner <i>v.</i>)	237
State (Watson <i>v.</i>)	193
State (Webb <i>v.</i>)	522

State <i>v.</i> Wilcox	429
State (Williams <i>v.</i>)	432
State (Wooten <i>v.</i>)	510
State (Yocum <i>v.</i>)	180
State (Young <i>v.</i>)	94
Staton (State <i>v.</i>)	341
Stoltz <i>v.</i> Friday	399
Superior Prods. (Lakeview Country Club, Inc. <i>v.</i>)	218

T

Tanner <i>v.</i> State	453
Taylor (Florence <i>v.</i>)	443
Taylor (Florence <i>v.</i>)	445
Taylor (POM, Inc. <i>v.</i>)	334
Thomson <i>v.</i> Zufari	208
Trans-States Lines, Inc. (Malone <i>v.</i>)	383
Tuck (Anselmo <i>v.</i>)	211
Tucker (Jackson <i>v.</i>)	318
Tudor Ins. Co. (Rogers <i>v.</i>)	226
Turner <i>v.</i> State	237
Twin City Bank (Dillon <i>v.</i>)	309

W

Washington County Circuit Court (Whittle <i>v.</i>)	136
Watson <i>v.</i> State	193
Webb <i>v.</i> State	522
Wells <i>v.</i> Estate of Wells	16
White River Lodge Enters. (McPeck <i>v.</i>)	68
Whittle <i>v.</i> Washington County Circuit Court	136
Wilcox (State <i>v.</i>)	429
Williams <i>v.</i> State	432
Wooten <i>v.</i> State	510
Wray (Nichols <i>v.</i>)	326

Y

Yocum <i>v.</i> State	180
Young <i>v.</i> State	94

Z

Zufari (Thomson *v.*) 208

OPINIONS DELIVERED BY THE RESPECTIVE
JUSTICES OF THE ARKANSAS SUPREME COURT
DURING THE PERIOD COVERED BY THIS
VOLUME AND DESIGNATED FOR PUBLICATION

BRADLEY D. JESSON, CHIEF JUSTICE:

Abernathy <i>v</i> State	61
Avett <i>v</i> State	320
Choate <i>v</i> State	251
Citizens to Establish a Reform Party <i>v</i> Priest	257
Davis, Gary Duaine <i>v</i> State	194
Davis, Lynn O. <i>v</i> State	96
Ferrell <i>v</i> State	455
Johnson, Wilford Gene <i>v</i> State	197
Owens, Gary Dean <i>v</i> State	110
Pearson <i>v</i> First Nat'l Bank	127
Reece <i>v</i> State	465

ROBERT H. DUDLEY, JUSTICE:

Hill <i>v</i> State	419
Moore <i>v</i> State	468
Mosley <i>v</i> State	469

DAVID NEWBERN, JUSTICE:

Davis, Robert Lee <i>v</i> State	36
Hawkins Constr. Co. <i>v</i> Maxell	133
Kennedy <i>v</i> State	3
McPeck <i>v</i> White River Lodge Enters.	68
Nichols <i>v</i> Wray	326
POM, Inc. <i>v</i> Taylor	334
Scott <i>v</i> State	267
State <i>v</i> Staton	341
Whittle <i>v</i> Washington County Circuit Court.....	136

TOM GLAZE, JUSTICE:

Baker Car & Truck Rental, Inc. <i>v</i> City of Little Rock	357
---	-----

Carter <i>v</i> State	477
Flemings <i>v</i> Littles	367
Kingsbury <i>v</i> Robertson	12
Randolph <i>v</i> ER Arkansas, P.A.	373
Slocum <i>v</i> State	38
Southwestern Glass Co. <i>v</i> Arkansas Oklahoma Gas Corp.	378
Thomson <i>v</i> Zufari	208
Wells <i>v</i> Estate of Wells	16

DONALD L. CORBIN, JUSTICE:

Anselmo <i>v</i> Tuck	211
Boral Gypsum, Inc. <i>v</i> Leathers	272
Helton <i>v</i> State	140
Key <i>v</i> State	73
Lakeview Country Club, Inc. <i>v</i> Superior Prods.	218
Malone <i>v</i> Trans-States Lines, Inc.	383
McCoy <i>v</i> State	155
McGarrah <i>v</i> McGarrah	81
Williams <i>v</i> State	432

ROBERT L. BROWN, JUSTICE:

Arkansas Dep't of Human Servs. <i>v</i> Estate of Lewis	20
Bradford <i>v</i> State	278
Donihoo <i>v</i> State	483
Esmeyer <i>v</i> State	491
Files <i>v</i> Arkansas State Highway and Transp. Dep't	291
Florence <i>v</i> Taylor	445
Gansky <i>v</i> Hi-Tech Eng'g.	163
Johnson, Reginald <i>v</i> State	44
Moncrief <i>v</i> State	173
Rogers <i>v</i> Tudor Ins. Co.	226
Turner <i>v</i> State	237

ANDREE LAYTON ROAF, JUSTICE:

Bill Fitts Auto Sales, Inc. <i>v</i> Daniels	51
Brown <i>v</i> State	504
Colonia Underwriters Ins. Co. <i>v</i> Richardson	300

Dillon <i>v.</i> Twin City Bank	309
King <i>v.</i> State	313
Pledger <i>v.</i> Mid-State Constr. & Materials, Inc.	388
Sebastian Lake Pub. Util. Co. <i>v.</i> Sebastian Lake Realty	85
Stoltz <i>v.</i> Friday.....	399
Wooten <i>v.</i> State.....	510
Yocum <i>v.</i> State.....	180

PER CURIAM:

Arnold <i>v.</i> State.....	444
Barnes <i>v.</i> State	59
Benton <i>v.</i> State	246
Bowden, Lamont <i>v.</i> State.....	95
Bowden, Lamont <i>v.</i> State.....	316
Branch <i>v.</i> State.....	410
Brooks <i>v.</i> State.....	520
Carroll <i>v.</i> State.....	249
Daffron <i>v.</i> State	411
Evans, Timothy G. <i>v.</i> State.....	191
Evans, Timothy G. <i>v.</i> State.....	414
Florence <i>v.</i> Taylor	443
Gardner <i>v.</i> Rogers.....	415
Guss <i>v.</i> State	521
Hicks <i>v.</i> State	192
Hilstrom, Keith Cox <i>v.</i> State	26
Hilstrom, Keith Cox <i>v.</i> State	317
Jackson <i>v.</i> State	27
Jackson <i>v.</i> Tucker	318
Jacobs <i>v.</i> State	30
Johnson, Larry <i>v.</i> State.....	417
Jones <i>v.</i> State	451
Lee <i>v.</i> State.....	452
McCready <i>v.</i> State.....	418
National Bank of Commerce <i>v.</i> Quirk.....	31
Norman <i>v.</i> State	1
Owens <i>v.</i> May	454
Owens, Billy <i>v.</i> State.....	93
R.J. "Bob" Jones Excavating Contr., Inc. <i>v.</i> Firemen's Ins. Co.	42

Rayford v. State33
 Sanson v. State60
 Smith v. State34
 State v. Parkman35
 Tanner v. State453
 Watson v. State193
 Webb v. State522
 Young v. State94

APPENDIX

RULES ADOPTED OR AMENDED BY PER CURIAM ORDER:

In Re: Rules Governing Admission to the Bar 538
 In Re: Supreme Court Rule 1-2 525
 In Re: Supreme Court Rule 1-2 and
 Rules of Appellate Procedure 534

APPOINTMENTS TO COMMITTEES:

In Re: Arkansas State Board of Law Examiners 544
 In Re: Board of Certified Court Reporter Examiners..... 543
 In Re: Civil Practice Committee Appointments..... 543
 In Re: Client Security Fund Committee Appointments..... 544

STANDARDS FOR PUBLICATION OF OPINIONS

Rule 5-2**Rules of the Arkansas Supreme Court and Court of Appeals****OPINIONS**

(a) **SUPREME COURT — SIGNED OPINIONS.** All signed opinions of the Supreme Court shall be designated for publication.

(b) **COURT OF APPEALS — OPINION FORM.** Opinions of the Court of Appeals may be in conventional form or in memorandum form. They shall be filed with the Clerk. The opinions need not contain a detailed statement of the facts, but may set forth only such matters as may be necessary to an understandable discussion of the errors urged. In appeals from decisions of the Arkansas Board of Review in unemployment compensation cases, when the Court finds the decision appealed from is supported by substantial evidence, that there is an absence of fraud, no error of law appears in the record and an opinion would have no precedential value, the order may be affirmed without opinion.

(c) **COURT OF APPEALS — PUBLISHED OPINIONS.** Opinions of the Court of Appeals which resolve novel or unusual questions will be released for publication when the opinions are announced and filed with the Clerk. The Court of Appeals may consider the question of whether to publish an opinion at its decision-making conference and at that time, if appropriate, make a tentative decision not to publish. Concurring and dissenting opinions will be published only if the majority opinion is published. All opinions that are not to be published shall be marked "Not Designated For Publication."

(d) **COURT OF APPEALS — UNPUBLISHED OPINIONS.** Opinions of the Court of Appeals not designated for publication shall not be published in the *Arkansas Reports* and shall not be cited, quoted, or referred to by any court or in any argument, brief, or other materials presented to any court (except in continuing or related litigation upon an issue such as *res judicata*, collateral estoppel, or law of the case). Opinions not designated for publication shall be listed in the *Arkansas Reports* by case number, style, date,

and disposition.

(e) COPIES OF ALL OPINIONS. — In every case the Clerk will furnish, without charge, one typewritten copy of all of the Court's published or unpublished opinions in the case to counsel for every party on whose behalf a separate brief was filed. The charge for additional copies is fixed by statute.

OPINIONS NOT DESIGNATED FOR PUBLICATION

- Acklin *v.* State, CR 96-242 (Per Curiam), Pro Se Motion for Appointment of Counsel denied June 10, 1996.
- Billett *v.* State, CR 96-582 (Per Curiam), Pro Se Motion for Rule on Clerk denied July 8, 1996.
- Bradley *v.* State, CR 95-895 (Per Curiam), Pro Se Motion to Supplement Counsel's Brief denied September 16, 1996.
- Buffington *v.* State, CR 96-292 (Per Curiam), affirmed September 16, 1996.
- Carroll *v.* Cole, CR 96-564 (Per Curiam), Pro Se Petition for Writ of Mandamus moot September 16, 1996.
- Chatten *v.* State, CR 96-462 (Per Curiam), Pro Se Motions for extension of Time to File Brief, to File a Handwritten Brief, for Appointment of Counsel, and to Strike a Portion of the Record and Pro Se Petition for Writ of Certiorari to Complete the Record denied and appeal dismissed June 10, 1996.
- Davis *v.* State, CR 96-111 (Per Curiam), affirmed September 16, 1996.
- Douglas *v.* State, CR 96-385 (Per Curiam), Pro Se Motion to File Two Copies of Appellant's Brief denied and appeal dismissed July 8, 1996.
- Edwards *v.* State, CR 96-396 (Per Curiam), Motion for Extension of Time and Motion for Appointment of Counsel denied and appeal dismissed July 1, 1996.
- Green *v.* State, CR 96-572 (Per Curiam), Pro Se Motion for Belated Appeal denied and Pro Se Motion for Appointment of Counsel moot July 8, 1996.
- Greene *v.* State, CR 96-362 (Per Curiam), Appellee's Motion for Extension of Time to File Response to Appellant's Pro Se motion to Withdraw Appeal granted July 15, 1996.
- Griffin *v.* McNeil, CR 96-727 (Per Curiam), Pro Se Petition for Writ of Mandamus moot July 8, 1996.
- Griffin *v.* State, CR 77-205 (Per Curiam), Pro Se Motion for Photocopies at Public Expense Pursuant to the Freedom of Information Act denied June 10, 1996.
- Harris *v.* Garrett, 95-1363 (Per Curiam), Pro Se Motion to Recall Mandate denied June 24, 1996.
- Hodges *v.* State, CR 96-397 (Per Curiam), Pro Se Motion for Extension of Time and Pro Se Motion for Access to Record denied and appeal dismissed June 3, 1996.

- Howard *v.* State, CR 85-78 (Per Curiam), Pro Se Motion for Photocopy of Trial Transcript at Public Expense denied June 24, 1996.
- Hunter *v.* State, CR 96-391 (Per Curiam), affirmed July 8, 1996.
- Jones *v.* State, CR 96-231 (Per Curiam), Pro Se Motions for Appointment of Counsel and for Transcript denied; order affirmed July 15, 1996.
- Lester *v.* State, CA CR 94-1312 (Per Curiam), Pro Se Motion for Transcript denied June 3, 1996.
- Lloyd *v.* State, CR 96-313 (Per Curiam), affirmed July 1, 1996.
- Mobbs *v.* State, CR 96-325 (Per Curiam), affirmed June 24, 1996.
- Nolen *v.* State, CR 96-191 (Per Curiam), Pro Se Motion for Belated Appeal of Judgment denied June 24, 1996.
- Reed *v.* State, CR 96-493 (Per Curiam), Pro Se Motions for Extension of Time to File Appellant's Brief and to Supplement Record granted; Motion to File Extended Abstract moot; Motion for Appointment of Counsel denied July 1, 1996.
- Robertson *v.* Glover, CR 96-695 (Per Curiam), Pro Se Petition for Writ of Mandamus moot September 16, 1996.
- Sheppard *v.* State, CR 5133 (Per Curiam), Pro Se Motion for Photocopy of Trial Transcript at Public Expense denied June 10, 1996.
- Smith *v.* State, CR 96-276 (Per Curiam), Motions for Transcript and Amended Motion for Transcript denied and appeal dismissed June 3, 1996.
- Thomas *v.* State, CR 96-528 (Per Curiam), Pro Se Motion for Belated Appeal of Order granted July 8, 1996.
- Voss *v.* State, CR 96-4859 (Per Curiam), Pro Se Motion for Belated Appeal of Order granted July 8, 1996.
- Wild *v.* State, CR 96-345 (Per Curiam), Pro Se Motion for Duplication of Appellant's Brief at Public Expense denied and appeal dismissed July 1, 1996.

—

APPENDIX

Rules Adopted
or Amended by
Per Curiam Orders

1

IN RE: SUPREME COURT RULE 1-2, AND OTHER
MATTERS RELATED TO THE JURISDICTION OF THE
SUPREME COURT AND THE COURT OF APPEALS

Supreme Court of Arkansas
Opinion delivered July 15, 1996

PER CURIAM. The imminent expansion of the Court of Appeals to twelve members pursuant to Act 11 of the General Assembly's First Extraordinary Session of 1995 presents the appropriate occasion to reexamine Supreme Court Rule 1-2 with respect to the jurisdiction of the Supreme Court and the Court of Appeals.

The relevant matters to be considered in allocating the caseload between the two appellate courts include the relative workloads of the courts and each court's appropriate role in the judicial hierarchy. It is generally recognized that a state's supreme court, in our case sitting *en banc* as a court of seven, should hear those cases presenting the opportunity to develop or expound substantial legal principles. A court of appeals, usually sitting in panels of three, should decide cases applying existing legal principles. See generally John Watkins, *Division of Labor between Arkansas's Appellate Courts*, 17 U. Ark. Little Rock L. J. 177 (1995).

For reasons having to do mostly with expediency and our desire not to have any greater backlog of cases to be decided than absolutely necessary, we have not followed those principles in our Rule 1-2. The Rule does permit the transfer of cases between the two appellate courts and the certification of cases from the Court of Appeals to the Supreme Court; however, we are not confident that presently the two courts are sufficiently utilizing these procedures to insure that each appeal is heard by the court better suited to decide each case.

We have reviewed the current workloads of the two courts, consulted with members of the Court of Appeals, and studied appellate procedures in other jurisdictions. Our objectives are a fair allocation of the cases between the two courts, the expeditious disposition of appeals, and better insuring that the Supreme Court decides those cases of significant public interest and major legal importance, such as appeals involving issues of first impression, appeals seeking to overrule precedents, and appeals presenting opportunities to resolve conflicting precedents.

Accordingly, effective for cases in which the record is lodged in the Supreme Court or Court of Appeals on or after September 1, 1996, and as more fully explained in the amended rules which follow, it will be necessary for the appellant, at the time the appellant's brief is filed, to complete and file a "Cover Sheet and Jurisdictional Statement." The chief aim of these papers is to identify cases of legal significance and importance, irrespective of the category of the law, which should be decided in the Supreme Court. Each court shall review the information contained in the Cover Sheet and Jurisdictional Statement as a threshold matter to assess whether the appeal is filed in the proper court, and, if not, to promptly transfer or certify the case. It is our intention that in the future both this Court and the Court of Appeals will more freely exchange cases to achieve the goals outlined above.

To implement the foregoing, Supreme Court Rules 1-2, 2-4, and 4-2 are amended as set out below.

Rule 1-2 is amended in its entirety by substituting the following:

RULE 1-2. APPELLATE JURISDICTION OF THE SUPREME COURT AND COURT OF APPEALS

(a) SUPREME COURT JURISDICTION. Appeals involving issues of significant public interest or legal principles of major importance shall be filed in the Supreme Court as well as other appeals in the following categories of cases:

1. All appeals involving the interpretation or construction of the Constitution of Arkansas;
2. Criminal appeals in which the death penalty, life imprisonment, or a cumulative sentence of more than 30 years imprisonment has been imposed;
3. Appeals from a circuit court concerning orders of the Arkansas Highway Commission or the Arkansas Pollution Control and Ecology Commission, or any appeals from a circuit court involving rates for public utilities fixed by municipal authorities;
4. Appeals based on petitions for post-conviction relief under Rule 37 of the Arkansas Rules of Criminal Procedure;
5. Petitions for quo warranto, prohibition, injunction, or mandamus directed to the state, county, or municipal officials or to

circuit, chancery, or probate courts;

6. Appeals pertaining to elections and election procedures;
7. Appeals involving the discipline of attorneys-at-law and or arising under the power of the Supreme Court to regulate the practice of law;
8. Appeals involving the discipline and disability of judges;
9. Motions for rule on the clerk under Rule 2-2 of the Rules of the Supreme Court and Court of Appeals; and when the case in which relief is sought has not previously been docketed in the Court of Appeals and a transcript filed, motions or petitions for writ of certiorari to complete the record and for admission to bail;
10. Second or subsequent appeals following an appeal which has been decided in the Supreme Court;
11. Interlocutory appeals permitted by statute or by the Arkansas Rules of Appellate Procedure, the Arkansas Rules of Civil Procedure, or the Arkansas Rules of Criminal Procedure;
12. Appeals presenting questions about usury;
13. Appeals presenting questions about products liability;
14. Appeals presenting questions about oil, gas, or mineral rights;
15. Appeals presenting questions about the law of torts;
16. Appeals presenting questions about the construction of deeds or wills; and
17. Other appeals involving issues of significant public interest or legal principles of major importance, such as:
 - (i) issues of first impression,
 - (ii) issues upon which there is a perceived inconsistency in the decisions of the Court of Appeals or Supreme Court,
 - (iii) issues involving federal constitutional interpretation,
 - (iv) issues of substantial public interest,
 - (v) significant issues needing clarification or development of the law, or overruling of precedent, and

- (vi) appeals involving substantial questions of law concerning the validity, construction, or interpretation of an act of the General Assembly, ordinance of a municipality or county, or a rule or regulation of any court, administrative agency, or regulatory body.

(b) COURT OF APPEALS JURISDICTION. All appeals not filed in the Supreme Court pursuant to Rule 1-2 (a) shall be filed in Court of Appeals.

(c) APPELLATE COVER SHEET AND JURISDICTIONAL STATEMENT. (1) At the time the appellant's brief and abstract are filed with the Clerk of the Court, the appellant shall also file eight copies in cases filed in the Supreme Court or eleven copies in cases filed in the Court of Appeals of a completed Cover Sheet and Jurisdictional Statement with evidence that the opposing party or counsel has been served. They are to be for jurisdictional purposes only, and the discussion of the issues on appeal should be limited to their jurisdictional relevance, and not to argue their substantive merit. The Cover Sheet and Jurisdictional Statement shall consist of the following:

(A) A Cover Page which shall be the same as the cover for the brief pursuant to Rule 4-2 (a)(7) except the title should be changed to "Cover Sheet and Jurisdictional Statement";

(B) A Jurisdictional Statement which shall include an "Informational Statement" on a form which may be copied from that provided below and which shall be available from the Clerk. The remainder of the Jurisdictional Statement, in narrative form, shall be completed on separate page(s), not to exceed three 8 1/2" x 11" double-spaced, typewritten pages and shall comply with the provisions of Rule 4-1(a) except for the binding requirements. All requested information shall be contained in the body of the Statement. No separate supporting materials shall be affixed. The attorney's signature and the certificate of service may appear on a separate page at the end and shall not count against the three page limit. The style of the case should not be stated, and, beginning with the first page, the jurisdictional statement shall contain in the order indicated:

- (i) The first numbered paragraph which shall concisely state all issues of law raised on appeal. The issues should be expressed in the

terms and circumstances of the case but without unnecessary detail.

(ii) The second numbered paragraph which shall state the following: "I express a belief, based on a reasoned and studied professional judgment, that this appeal raises (no) (the following) question(s) of legal significance for jurisdictional purposes." Then, the appellant shall discuss as many of the issues listed in Rule 1-2 (a) (17) which are relevant to the appeal. Each issue should be stated with accuracy, brevity, and clarity, and should include the citations of any cases sought to be overruled or perceived to be in conflict.

(2) If a cross-appeal is filed, the cross-appellant shall complete and file a Cover Sheet and Jurisdictional Statement in the same format as that for the appellant limited to the issues raised by the cross-appeal, with evidence of service upon the opposing party or counsel.

(3) If there is substantial disagreement on the part of an appellee or cross-appellee with the information in the appellant's Cover Sheet or Jurisdictional Statement, the appellee or cross-appellee may file with the appellee's or cross-appellee's brief and serve upon opposing counsel a statement entitled "Appellee's Response to Jurisdictional Statement", in which appellee or cross-appellee may dispute or clarify any of the appellant's statements, concluding with the following certification. "I express a belief, based on a reasoned and studied professional judgment, that the statements made by the appellant in the appellant's Cover Sheet and Jurisdictional Statement to which I have taken exception are material to understanding correctly the nature of this appeal and its disposition in the appropriate appellate court." The number to be filed and page requirements for appellee's response shall comply with the provisions of subsection (c)(1)(C) except that it shall not exceed *two* pages. The appellee's response shall include the Cover Page (same as cover of appellee's brief), but not an Informational Statement.

(d) **TRANSFER AND CERTIFICATION.** The Supreme Court may transfer to the Court of Appeals any case appealed to the Supreme Court and may transfer to the Supreme Court any case appealed to the Court of Appeals. A case which has been appealed to the Court of Appeals may be certified to the Supreme Court by the Court of Appeals if the Court of Appeals finds that the case: (1) is excepted from its jurisdiction by Rule 1-2 (a), or (2) otherwise involves an issue of significant public interest or a legal princi-

ple of major importance. The Supreme Court may accept for its docket cases so certified or may remand any of them to the Court of Appeals for decision. The Clerk of the Court shall notify the parties or their counsel of the transfer of any case.

(e) **PETITION FOR REVIEW.** No appeal as of right shall lie from the Court of Appeals to the Supreme Court. The Supreme Court will review an appeal decided by the Court of Appeals only on application and in the discretion of the Supreme Court pursuant to Rule 2-4. In determining whether to grant a petition to review, the following, while neither controlling nor fully measuring the Supreme Court's discretion, indicate the character of reasons that will be considered: (i) the case was decided in the Court of Appeals by a tie vote, (ii) the Court of Appeals rendered a decision which is arguably in conflict with a prior holding of a published opinion of either the Supreme Court or the Court of Appeals, or (iii) the Court of Appeals arguably erred in some way related to one of the grounds listed in Rule 1-2(a)(17).

(f) **IMPROPER FILING.** No case filed in either the Supreme Court or the Court of Appeals should be dismissed for having been filed in the wrong court but shall be transferred or certified to the proper court.

(g) **ALLOCATION OF WORKLOAD.** Notwithstanding the foregoing provisions, cases may be assigned and transferred between the courts by Supreme Court order to achieve a fair allocation of the appellate workload between the Supreme Court and the Court of Appeals.

Rule 2-4 is amended by:

deleting subsection (c) and substituting the following:

“(c) **GROUND FOR REVIEW.** A petition for review must allege one of the following: (i) the case was decided in the Court of Appeals by a tie vote, (ii) the Court of Appeals rendered a decision which is in conflict with a prior holding of a published opinion of either the Supreme Court or the Court of Appeals, or (iii) the Court of Appeals otherwise erred with respect to one of the grounds listed in Rule 1-2(a)(17).”

Rule 4-2 is amended as follows:

Subsection (a)(2), "Jurisdictional Statement," is deleted, and the remaining subsections shall be appropriately redesignated (a) (2-7).

COVER SHEET AND JURISDICTIONAL STATEMENT

Counsel should keep in mind the Appellate Cover Sheet and Jurisdictional Statement are to be used for jurisdictional purposes only, and the discussion of the issues on appeal should be limited to their jurisdictional relevance, and not to argue their substantive merit. The Appellate Cover Sheet and Jurisdictional Statement shall consist of the following:

(a) The Cover Page shall be the same as the cover for the brief pursuant to Rule 4-2 (a) (7) except the title should be changed to "Cover Sheet and Jurisdictional Statement";

(b) The Informational Statement on the form provided by the Clerk; and

(c) The Jurisdictional Statement pursuant to Rule 1-2 (c), which shall be completed on separate page(s), not to exceed three pages, and subject to the provisions of Rule 1-2 (c)(1)(C). All requested information shall be contained in the body of the Statement. No separate supporting materials shall be affixed. The style of the case should not be stated, and, beginning with the first page, it shall contain in the order indicated:

1. The first numbered paragraph shall concisely state all issues of law raised on appeal. They should be expressed in the terms and circumstances of the case but without unnecessary detail.

2. The second numbered paragraph shall state the following: "I express a belief, based on a reasoned and studied professional judgment, that this appeal raises (no) (the following) question(s) of legal significance for jurisdictional purposes:" Then, the appellant shall explain each of the issues checked on PART V of the Informational Statement which are relevant to the appeal. Each issue should be

stated with accuracy, brevity, and clarity, and should include the citations of any cases sought to be overruled or perceived to be in conflict.

INFORMATIONAL STATEMENT

- I. ANY RELATED OR PRIOR APPEAL (Identify)
- II. BASIS OF SUPREME COURT JURISDICTION (see Rule 1-2 (a))
 - (1) Construction of Constitution of Arkansas
 - (2) Death penalty, life imprisonment, thirty years
 - (3) Highway Comm., A.P.C.E.C., or municipal utility rates
 - (4) Rule 37
 - (5) Extraordinary writs
 - (6) Elections and election procedures
 - (7) Discipline of attorneys
 - (8) Discipline and disability of judges
 - (9) Rule on Clerk
 - (10) Previous appeal in Supreme Court
 - (11) Interlocutory appeal
 - (12) Usury
 - (13) Products liability
 - (14) Oil, gas, or mineral rights
 - (15) Torts
 - (16) Construction of deed or will
 - (17) Significant public interest/major legal principle (see Part V below)
- III. NATURE OF APPEAL

[Write a brief statement limited to the space provided describing the case on appeal, and set out the causes of action (i.e., in a civil case, tort, contract, etc., or in a criminal case, the convicted offenses, whether felony or misdemeanor, and the punishment) underlying the judgment from which the appeal is taken.]
- IV. IS THE ONLY ISSUE ON APPEAL WHETHER THE EVIDENCE IS SUFFICIENT TO SUPPORT THE JUDGMENT?

V. EXTRAORDINARY ISSUES. Check if applicable, and discuss in PARAGRAPH 2 of the Jurisdictional Statement.

- appeal presents issue of first impression,
- appeal involves issue upon which there is a perceived inconsistency in the decisions of the Court of Appeals or Supreme Court,
- appeal involves federal constitutional interpretation,
- appeal is of substantial public interest,
- appeal involves significant issue needing clarification or development of the law, or overruling of precedent.
- appeal involves significant issue concerning construction of statute, ordinance, rule, or regulation.

IN RE: SUPREME COURT RULE 1-2, AND RULES OF
APPELLATE PROCEDURE — CIVIL RULE 3 AND
CRIMINAL RULE 2

Supreme Court of Arkansas
Delivered September 9, 1996

PER CURIAM. By *per curiam* order dated July 15, 1996, this Court amended Supreme Court Rule 1-2 to create the requirement of filing cover sheets with appellate briefs to aid in assuring cases are filed in the appellate court having jurisdiction. We have since determined that minor changes are necessary to reconcile various rules. The following amendments are effective immediately.

The following language is added to *Rule 3 of the Rules of Appellate Procedure — Civil* at the end of subsection (E) CONTENT OF NOTICE OF APPEAL OR CROSS-APPEAL, and to *Rule 2 of the Rules of Appellate Procedure — Criminal* at the end of subsection (A) NOTICE OF APPEAL:

The notice shall also state whether the appeal is to the Court of Appeals or to the Supreme Court; and if to the Supreme Court, the appellant shall designate the applicable subdivision of Supreme Court Rule 1-2(a) which gives the Supreme Court jurisdiction. This declaration shall be for the purpose of placing the case with one court or the other for preliminary administration. It shall not preclude the appellant from filing the Cover Sheet and Jurisdictional Statement pursuant to Supreme Court Rule 1-2 and the Brief pursuant to Supreme Court Rules 4-3 and 4-4 in the alternative court if that is later determined by the appellant to be appropriate.

Supreme Court Rule 1-2 is amended by substituting for the form of the Informational Statement which appeared in the *per curiam* order of July 15, 1996, the form appearing at the end of this order. Henceforth, the Supreme Court Clerk is authorized to make changes in the format of the Informational Statement for purposes of clarity and administration.

COVER SHEET AND JURISDICTIONAL STATEMENT

Counsel should keep in mind the Appellate Cover Sheet and Jurisdictional Statement are to be used for jurisdictional purposes only, and the discussion of the issues on appeal should be limited to their jurisdictional relevance, and not to argue their substantive merit. The Appellate Cover Sheet and Jurisdictional Statement shall consist of the following:

(a) The Cover Page shall be the same as the cover for the brief pursuant to Rule 4-2 (a) (7) except the title should be changed to "Cover Sheet and Jurisdictional Statement";

(b) The Informational Statement on the form provided by the Clerk; and

(c) The Jurisdictional Statement pursuant to Rule 1-2 (c), which shall be completed on separate page(s), not to exceed three pages, and subject to the provisions of Rule 1-2 (c)(1)(C). All requested information shall be contained in the body of the Statement. No separate supporting materials shall be affixed. The style of the case should not be stated, and, beginning with the first page, it shall contain in the order indicated:

1. The first numbered paragraph shall concisely state all issues of law raised on appeal. They should be expressed in the terms and circumstances of the case but without unnecessary detail.

2. The second numbered paragraph shall state the following: "I express a belief, based on a reasoned and studied professional judgment, that this appeal raises (no) (the following) question(s) of legal significance for jurisdictional purposes." Then, the appellant shall explain each of the issues checked on PART V of the Informational Statement which are relevant to the appeal. Each issue should be stated with accuracy, brevity, and clarity, and should include the citations of any cases sought to be overruled or perceived to be in conflict.

INFORMATIONAL STATEMENT

I. ANY RELATED OR PRIOR APPEAL (*Identify*)

II. BASIS OF SUPREME COURT JURISDICTION (see Rule 1-2 (a))

Check here if NO basis for Supreme Court Jurisdiction is being asserted, or check below all applicable grounds on which Supreme Court Jurisdiction is asserted.

- (1) Construction of Constitution of Arkansas
- (2) Death penalty, life imprisonment, thirty years
- (3) Highway Comm., A.P.C.E.C., or municipal utility rates
- (4) Rule 37
- (5) Extraordinary writs
- (6) Elections and election procedures
- (7) Discipline of attorneys
- (8) Discipline and disability of judges
- (9) Rule on Clerk
- (10) Previous appeal in Supreme Court
- (11) Interlocutory appeal
- (12) Usury
- (13) Products liability
- (14) Oil, gas, or mineral rights
- (15) Torts
- (16) Construction of deed or will
- (17) Significant public interest/major legal principle
(SEE PART V BELOW)

III. NATURE OF APPEAL [WRITE A BRIEF STATEMENT LIMITED TO THE SPACE PROVIDED DESCRIBING THE CASE ON APPEAL, AND SET OUT THE CAUSES OF ACTION (I.E., IN A CIVIL CASE, TORT, CONTRACT, ETC., OR IN A CRIMINAL CASE, THE CONVICTED OFFENSES, WHETHER FELONY OR MISDEMEANOR, AND THE PUNISHMENT) UNDERLYING THE

JUDGMENT FROM WHICH THE APPEAL IS TAKEN.]

IV. IS THE ONLY ISSUE ON APPEAL WHETHER THE EVIDENCE IS SUFFICIENT TO SUPPORT THE JUDGMENT?

V. EXTRAORDINARY ISSUES. (*Check if applicable, and discuss in PARAGRAPH 2 of the Jurisdictional Statement.*)

- appeal presents issue of first impression,
- appeal involves issue upon which there is a perceived inconsistency in the decisions of the Court of Appeals or Supreme Court,
- appeal involves federal constitutional interpretation,
- appeal is of substantial public interest,
- appeal involves significant issue needing clarification or development of the law, or overruling of precedent.
- appeal involves significant issue concerning construction of statute, ordinance, rule, or regulation.

IN RE: RULES GOVERNING ADMISSION TO THE BAR

Supreme Court of Arkansas
Opinion delivered September 16, 1996

PER CURIAM. In recent years, the Arkansas State Board of Law Examiners has been called upon to implement matters of first impression as to initial admission or reinstatement pursuant to the Rules Governing Admission to the Bar.

In response to this maturation of the admission and reinstatement process, the Court deems it appropriate to adopt certain pertinent decisions of the Board as regulations approved by this Court. Accordingly, the Court amends and republishes attached Rule I to the Rules Governing Admission to the Bar. Further, as set forth in the amended Rule I, the Court adopts and publishes the attached regulations which shall appear as an appendix to the Rules Governing Admission to the Bar.

In 1938, Amendment 28 to the Constitution of the State of Arkansas was adopted. That amendment conferred upon the Court the authority to regulate the practice of law. Prior to adoption of that amendment, statutes governed the process of admission to the practice of law in this State. In order to dispel any uncertainty as to the exclusive authority of this Court to regulate the practice of law, including the admission process, the Court hereby amends and republishes Rule XII as attached.

RULE I.
COMPOSITION OF BOARD OF LAW EXAMINERS

The State Board of Law Examiners, (hereinafter Board), is hereby constituted, before whom all applicants for license must appear.

Said Board shall consist of eleven members: two from each Congressional District (as now or hereafter constituted), and the remainder from the State at large. Each appointment shall be for a term of three years, unless otherwise designated by the Supreme Court. Vacancies occurring from causes other than expiration of term of office will be filled by the Supreme Court as they occur, and the person so appointed shall serve the remainder of the term of his or her predecessor. The Board, from its members, shall annually select its own chair. Absent exigent circumstances, a Board member may serve no more than two (2) consecutive full three year terms. A replacement where a vacancy occurs shall not be considered a full three year term. Members shall continue to serve beyond their designated term until such time as their successor is qualified and appointed by the Court.

The Board, its individual members, Executive Secretary and employees and agents of the Board are absolutely immune from suit or action for their activities in discharge of their duties hereunder to the full extent of judicial immunity in Arkansas.

The Board may adopt regulations consistent with these rules, to be submitted to the Arkansas Supreme Court for approval prior to their implementation. Any regulations adopted by the Board and approved by the Court shall appear as an appendix to the Rules Governing Admission to the Bar. (Per Curiam Order, February 10, 1969; Amended by Per Curiam Order, May 18, 1992; amended by per curiam July 17, 1995.)

RULE XII.
REQUIREMENTS FOR TAKING EXAMINATION

1. Graduation from a law school shall not confer the right of admission to the bar, and every candidate shall be subject to an examination.

2. No candidate shall be allowed to take the bar examination who is not a citizen of the United States or an alien lawfully residing in the United States.

3. No candidate shall be allowed to take the bar examination unless the applicant has graduated, or completed the requisites for graduation, from a Law School approved by the American Bar Association.

4. An applicant shall not be limited to the number of times he or she may take the Arkansas Bar Examination.

5. The requirements set forth in this rule, as well as the other Rules Governing Admission to the Bar, are exclusive and may not be contravened or supplemented except by further order of the Arkansas Supreme Court. (Per Curiam, February 10, 1969 as Amended by Per Curiam, September 22, 1969; Amended by Per Curiam, September 11, 1972; Amended by Per Curiam, December 10, 1979, Amended by Per Curiam, March 23, 1983; Amended by Per Curiam Order, May 18, 1992; Amended by Per Curiam Order, January 18, 1994.)

APPENDIX
RULES GOVERNING ADMISSION TO THE BAR
REGULATIONS

1. Subsequent to an examination, an applicant may not have access to copies of his or her answers.

2. With regard to retention or transfer of Multistate Bar Examination scores, or retention of essay scores, an applicant may utilize any such score provided that said score falls within the applicable time frame as set forth in Rule IX.

3. The essay portion of the examination will be considered two-thirds ($\frac{2}{3}$) of the overall average, and the Multistate Bar Examination portion shall be considered one-third ($\frac{1}{3}$) of the overall average.

4. A passing score under this rule shall remain valid for a period of one (1) year after its determination, or a final vote of the Board on admissibility of the applicant, whichever is earlier, subject to the following exceptions:

(a) In the event of Board denial of initial admission, followed by an appeal to the Arkansas Supreme Court pursuant to Rule XIII of these rules, or other litigation challenging such denial, the examination score shall remain valid until the conclusion of the appeal or litigation; or,

(b) In the event the applicant opts to participate in the deferral of initial admission program as set forth in Rule XIII of these rules, then the examination score shall remain valid until final Board determination of admissibility, or administrative termination, whichever is earlier; and,

(c) Periods of delay attributable to actions of the Board or its Executive Secretary shall be excluded from the calculation of the aforementioned one year period.

5. The application required by this rule shall be in the office of the Secretary of the State Board of Law Examiners no later than 5:00 p.m. on the date that falls sixty (60) days before the first day of each exam, and this deadline shall be strictly construed. Calculation of the sixty (60) days shall exclude the first day of the exam and, if such date falls on a Saturday, Sunday, or legal holiday, the application deadline shall be the preceding day.

6. Telefacsimile copies of documents required by the Board of Law Examiners in connection with the application for initial admission or reinstatement shall not be accepted.

7. In those instances where the Chair of the Board determines that an evidentiary hearing is required, and a bond is requested by the Executive Secretary, pauper status is not available to the applicant.

8. Pursuant to the section of this rule titled "Board Decision — Evidentiary Hearing — Appeal After Denial" only those votes conveyed to the Executive Secretary within thirty (30) days after receipt of the transcript by the respective Board members shall be counted. In the event of abstention by a Board member prior to a vote on the transcript, the Court shall appoint a substitute examiner to review the record de novo.

Appointments to
Committees



IN RE: BOARD OF CERTIFIED COURT REPORTER
EXAMINERS

Supreme Court of Arkansas
Opinion delivered July 15, 1996

PER CURIAM. Chancery Judge Leon Jamison of Pine Bluff and Ms. Jana Hawley, CCR, of Percy, are appointed to our Board of Certified Court Reporter Examiners. Each term of appointment is for a three-year period expiring July 31, 1999.

The Court expresses its gratitude to Judge Jamison and Ms. Hawley for accepting appointment to this most important Board.

The Court also expresses its gratitude to Judge Graham Partlow and Ms. Jill Barber, whose terms on the Board have expired, for their dedicated service to the Board.

IN RE: CIVIL PRACTICE COMMITTEE APPOINTMENTS

Supreme Court of Arkansas
Opinion delivered July 15, 1996

PER CURIAM. Katharine C. Day of Monticello, Thomas H. McGowan of Little Rock, and James M. Pratt, Jr., of Camden are appointed to the Arkansas Supreme Court Committee on Civil Practice.

The Court thanks Katherine C. Gay of Fayetteville, Elton A. Rieves, III, of West Memphis, and James D. Sprott of Harrison, whose terms as members of the Committee have expired, for their faithful service.

IN RE: CLIENT SECURITY FUND COMMITTEE
APPOINTMENTS

Supreme Court of Arkansas
Opinion delivered July 15, 1996

PER CURIAM. Jill R. Jacoway of Fayetteville and Martha Miller-Harriman of Van Buren are hereby reappointed to the Client Security Fund Committee for a five-year term to expire July 30, 2001.

The Court thanks Ms. Jacoway and Ms. Miller-Harriman for accepting reappointment to this most important Committee.

IN RE: ARKANSAS STATE BOARD OF LAW EXAMINERS

Supreme Court of Arkansas
Opinion delivered September 16, 1996

PER CURIAM. John D. Anderson has petitioned for reinstatement to the Bar of Arkansas. Board member and Chairman Jim Van Dover has advised that he will abstain from participation in Mr. Anderson's reinstatement proceeding.

The Court hereby appoints Watson Bell of Searcy to act as an at-large substitute examiner and Chairman in place of Mr. Van Dover. This appointment is exclusively for the purpose of authorizing Mr. Bell to act as Chair and voting member of the Board of Law Examiners in connection with the petition for reinstatement filed by John D. Anderson.

Alphabetical
Headnote
Index

Vertical line of text, possibly a page number or header.



HEADNOTE INDEX

ADMINISTRATIVE LAW & PROCEDURE:

- Standard of review. *Files v. Arkansas State Highway & Transp. Dep't*, 291.
Administrative construction of statute, when overturned. *Id.*
Highway Department appropriately examined city's zoning ordinance. *Id.*
Agency decision affirmed if supported by substantial evidence. *Id.*

APPEAL & ERROR:

- Proper summary of pleadings essential for court to consider case. *Kingsbury v. Robertson*, 12.
Exhibits necessary for clear understanding of case must be included in abstract, seven judges cannot examine one transcript. *Id.*
Complaint and exhibits not abstracted, decision of trial court summarily affirmed. *Id.*
Motion for rule on clerk denied, attorney did not admit fault. *Hilstrom v. State*, 26.
Motion for rule on clerk, when granted. *Id.*
Representation by trial counsel continues until permission to withdraw given by trial or appellate court. *Jackson v. State*, 27.
Convicted defendant may waive right to appeal, no such waiver here. *Id.*
Direct appeal of conviction is matter of right, cannot be denied because counsel has failed to follow appellate rules. *Id.*
Motion for belated appeal granted, trial court directed to order transcription of tapes in attempt to obtain sufficient record. *Jacobs v. State*, 30.
Motion to amend mandate granted in part, costs for record amended. *National Bank of Commerce v. Quirk*, 31.
Motion for rule on clerk, good cause for granting. *Rayford v. State*, 33.
Motion for rule on the clerk treated as motion for belated appeal, good cause for granting. *Smith v. State*, 34.
Motion for extension of brief time granted. *State v. Parkman*, 35.
Abstract flagrantly deficient, decision affirmed. *Davis v. State*, 36.
Issue raised for first time on appeal, issue not considered. *Slocum v. State*, 38.
Pretrial motion in limine not ruled upon, issue not preserved for appeal without specific contemporaneous objection during the objectionable testimony. *Id.*
Argument not made to trial court, not preserved for appeal. *Johnson v. State*, 44.
Postconviction case, no provision in rules for reconsideration. *Barnes v. State*, 59.
Motion for rule on clerk, good cause for granting. *Sanson v. State*, 60.
No showing motion ever ruled upon at trial, issue not reached on appeal. *McPeck v. White River Lodge Enters.*, 68.
No order denying relief abstracted, appellate court did not reach issue. *Id.*
Bare essentials of abstract, neither appellants or cross-appellants properly abstracted record to demonstrate error. *Id.*
Chancery proceedings, standard of review. *McGarrah v. McGarrah*, 81.
Record limited to that which is abstracted, appellant's burden. *Id.*
Abstracting requirements. *Id.*
Deficient abstract, merits of appeal not reached. *Id.*
Appellant was aggrieved party and had standing to raise issue on appeal. *Sebastian Lake Pub. Util. Co. v. Sebastian Lake Realty*, 85.
Argument raised for first time on appeal not addressed, even constitutional arguments waived. *Id.*
Petition for rehearing denied where appellant failed to provide sufficient abstract. *Owens v. State*, 93.
Appellate court will not explore record for prejudicial error. *Id.*

- Motion for rule on clerk, good cause for granting. *Young v. State*, 94.
- Actual instruction not abstracted, abstract of proffered instruction and presentation of issue to court sufficient for review. *Owens v. State*, 110.
- Argument not raised below, objection not considered on appeal. *Id.*
- Municipal judgment appealed to circuit court, trial *de novo* results. *Whittle v. Washington County Circuit Court*, 136.
- Postconviction relief, review of trial court's denial. *Helton v. State*, 140.
- Trial tactics and strategy not grounds for postconviction relief. *Id.*
- Postconviction relief, Rule 37 is not forum for debating trial tactics or strategy. *Id.*
- Flagrantly deficient abstract, scattered references are not substitute for proper abstract. *Moncrief v. State*, 173.
- Flagrantly deficient abstract, no showing that directed-verdict motions were made. *Id.*
- Record confined to that which is abstracted. *Id.*
- Burden of obtaining ruling is on movant, unresolved objections waived. *Id.*
- Flagrantly deficient abstract, appellant failed to abstract objection to seating of disqualified prosecutor. *Id.*
- Flagrantly deficient abstract, appellant failed to abstract any response or objection to State's petition for removal from office. *Id.*
- Even constitutional issues are waived unless raised before trial court. *Id.*
- Appellant's failure to move to supplement or substitute abstract prior to submission of case fatal to appeal. *Id.*
- Review of sufficiency of evidence required before review of trial errors. *Yocum v. State*, 180.
- Motion for rule on clerk, good cause for granting. *Evans v. State*, 191.
- Motion for rule on clerk treated as motion for belated appeal, good cause for granting. *Hicks v. State*, 192.
- Motion for rule on clerk, good cause for granting. *Watson v. State*, 193.
- Record on appeal confined to that which is abstracted, issue not reached. *Davis v. State*, 194.
- No motion or ruling ever obtained by appellant concerning voluntariness of his confession, issue will not be considered for first time on appeal. *Johnson v. State*, 197.
- Objections must be made at first opportunity or they are waived. *Id.*
- No duty to warn or instruct found at trial, no citation to applicable law, issue not reached. *Lakeview Country Club, Inc. v. Superior Prods.* 218.
- Review on appeal limited to record as abstracted in briefs, no evidence of record upon which court could conclude trial court erred in directing verdict in appellee's favor. *Id.*
- Appellee's involvement in case unsupported by proof, directed verdict in appellee's favor not error. *Id.*
- Notice of appeal, filing is jurisdictional, only substantial compliance with procedural rule required. *Rogers v. Tudor Ins. Co.*, 226.
- Substantial compliance with Ark. R. App. P. 3(e), motion to dismiss denied. *Id.*
- Order reviewed as one for summary judgment. *Id.*
- Postconviction relief, all claims for must be raised under Rule 37. *Benton v. State*, 246.
- Postconviction relief, filing petition with circuit clerk is critical. *Id.*
- Postconviction relief, Rule 37 time limitations are jurisdictional, trial court did not have authority to consider appellant's petition, appeal dismissed. *Id.*
- When case becomes moot. *Dillon v. Twin City Bank*, 309.
- Moot issues generally not addressed, exceptions not applicable. *Id.*
- Voluntary transfer of property and acceptance were inconsistent with subsequent appeal related to transfer. *Id.*

- Issue not before supreme court, merits not reached. *Id.*
- Court does not presume error simply because appeal is made, appellant has burden of bringing up record sufficient to demonstrate error. *King v. State*, 313.
- Abstract flagrantly deficient, issues not considered. *Id.*
- Motion for rule on clerk, good cause for granting. *Hilstrom v. State*, 317.
- Burden of obtaining ruling on appellants, no error found. *Nichols v. Wray*, 326.
- Hall* case not overruled, meaning of statute clear. *Id.*
- Although interlocutory, order granting motion to certify case as a class action was appealable, issue on appeal went beyond technical aspects of class certification and was not regarded as untimely. *State v. Staton*, 341.
- Arguments not raised by parties not reached on appeal, dissent's point not raised by the parties. *Id.*
- Motion to dismiss, standard of review. *Malone v. Trans-States Lines, Inc.*, 383.
- Part of order dismissing complaint for lack of subject-matter jurisdiction reversed. *Id.*
- Motion for rule on clerk, good cause for granting. *Branch v. State*, 410.
- Ark. Sup. Ct. R. 4-2(b)(2) contemplates filing of substituted brief by appellant after filing of appellee's brief, appellee afforded opportunity to supplement brief. *Daffron v. State*, 411.
- Supreme court routinely grants appellant's request to file substituted brief when case not ready for submission, discretion to deny request. *Id.*
- Appellate court may permit supplemental abstract in reply brief upon motion. *Id.*
- Case not yet submitted for decision, motion to supplement abstract and file substituted brief granted. *Id.*
- Motion for rule on clerk, good cause for granting. *Johnson v. State*, 417.
- Motion for rule on clerk, good cause for granting. *McCready v. State*, 418.
- Issue cannot be raised for first time on appeal. *Hill v. State*, 419.
- Appellant cannot change his argument on appeal, argument not reached. *Id.*
- Arguments presented without citation to authority not considered, statutes presumed constitutional. *Williams v. State*, 432.
- Moot arguments not addressed by court. *Id.*
- Appellant's argument deficient, argument not reached. *Id.*
- Ex Post Facto Clauses not violated, argument previously answered. *Id.*
- Argument based upon false premise. *Id.*
- No argument or authority cited, argument not addressed. *Id.*
- Argument based on false premise. *Id.*
- Argument without citation to authority, deficient argument not reached. *Id.*
- Motion for rule on clerk, good cause for granting. *Arnold v. State*, 444.
- Burden of obtaining ruling is on movant. *Florence v. Taylor*, 445.
- Appellate court limited in review to record before it. *Id.*
- Motion for rule on clerk treated as motion for belated appeal, good cause for granting. *Jones v. State*, 451.
- Motion for rule on clerk, good cause for granting. *Lee v. State*, 452.
- Motion for rule on clerk, good cause for granting. *Tanner v. State*, 453.
- Motion for reconsideration and clarification denied. *Owens v. May*, 454.
- Supreme court did not decide whether sealed transcripts should be opened. *Id.*
- Sentencing argument raised for first time on appeal, argument not considered. *Reece v. State*, 465.
- Abstract flagrantly deficient, judgment of conviction summarily affirmed. *Moore v. State*, 468.
- Claim of ineffective assistance of counsel not raised below, matter not reached on appeal. *Mosley v. State*, 469.

Photographs not allowed at trial not included in abstract, issue not properly presented for review. *Id.*

Argument raised for first time on appeal, issue not reached by court. *Id.*

Motion for directed verdict not renewed at close of case, denial of motion not considered on appeal. *Carter v. State*, 477.

Failure to abstract photographs, issue not preserved for review. *Domihoo v. State*, 483.

Failure to abstract prejudicial parts of videotape precludes review. *Id.*

Uncontested argument provided no basis for reversal. *Id.*

Failure to object to argument at trial, review of issue precluded. *Id.*

Petitions for writ of certiorari not presented at trial, argument cannot be raised on appeal. *Wooten v. State*, 510.

No ruling made on motion to suppress in-court identification, matter not subject to review. *Id.*

Indigency motion remanded. *Brooks v. State*, 520.

Motion for rule on clerk, good cause for granting. *Guss v. State*, 521.

Petitions for writ of certiorari and rule on clerk were premature, matter remanded for determination of indigency. *Webb v. State*, 522.

ARREST:

Warrantless arrest, violation of law in officer's presence. *Yocum v. State*, 180.

Warrantless arrest, when reasonable cause exists, appellant's burden. *Id.*

Arresting officer had reasonable cause to arrest appellant for criminal trespass. *Id.*

ATTORNEY & CLIENT:

Attorney cannot abandon convicted defendant because there is no money for appeal, attorney's obligation, motion to be relieved. *Jackson v. State*, 27.

Trial attorney did not receive permission to be relieved, appointed for appeal, writ of certiorari issued. *Id.*

Ineffective assistance of counsel, calling particular witness. *Johnson v. State*, 44.

Claim of ineffective assistance of counsel, what petitioner must show, presumption of reasonable conduct. *Helton v. State*, 140.

Claim of ineffective assistance of counsel, two-prong test. *Id.*

Claim of ineffective assistance of counsel, totality of evidence must be considered. *Id.*

Claim of ineffective assistance of counsel, petitioner must show that outcome of case would have been different. *Id.*

Trial counsel's decision not to present serologist's testimony was within realm of professional judgment. *Id.*

Trial counsel's decision not to call alibi witness was trial strategy and not grounds for relief. *Id.*

Trial counsel's failure to call friend of appellant was not ineffective assistance. *Id.*

Omitted testimony not prejudicial to appellant's case. *Id.*

Trial counsel was not ineffective in failing to seek independent DNA testing. *Id.*

Claim of ineffective assistance of counsel, appellant could not prove that any mitigating evidence existed. *Id.*

Client cannot avoid consequences of acts of freely selected agent, no abuse of discretion in dismissal. *Florence v. Taylor*, 445.

BANKRUPTCY:

Appointment of receivers, when appointment proper. *Pearson v. First Nat'l Bank*, 127.

BANKS & BANKING:

Joint tenants have survivorship rights, unambiguous statutes are given their clear meaning. *Nichols v. Wray*, 326.

Intent of decedent clear from face of certificates, court's refusal to impose constructive trust not error. *Id.*

CIVIL PROCEDURE:

Intervention, three requirements for intervention as matter of right. *Pearson v. First Nat'l Bank*, 127.

Intervention as matter of right should have been allowed, trial court's order of receivership affected appellant's claim. *Id.*

Service of process, how one-year savings statute is invoked. *Thomson v. Zufari*, 208.

Service never completed, one-year savings statute inapplicable. *Id.*

Service of process not up to clerk, pro se appellant had responsibility to obtain service. *Id.*

CONSTITUTIONAL LAW:

Due process, statutory-vagueness argument without merit. *Yocum v. State*, 180.

Right to notice and opportunity to be heard. *Florence v. Taylor*, 445.

When trial court's ruling on in-court identification procedure will be reversed, how determination is made. *Wooten v. State*, 510.

Identification may be sufficiently reliable under totality of circumstances, factors considered in determining reliability. *Id.*

Trial court concluded lineup was not suggestive, no error found. *Id.*

CONTEMPT:

Attorney ordered incarcerated for forty-eight hours. *Norman v. State*, 1.

Show-cause order issued. *Bowden v. State*, 95.

Contempt order issued, statements in mitigation considered. *Bowden v. State*, 316.

Show-cause order issued. *Florence v. Taylor*, 443.

CONTRACTS:

Reformation of, one not party to contract may not obtain reformation. *Nichols v. Wray*, 326.

Chancellor correctly found that lease was free of ambiguity and did not automatically extend termination date. *Baker Car & Truck Rental, Inc. v. City of Little Rock*, 357.

CORPORATIONS:

Nonprofit corporation, corporate entity can act only through directors and officers. *Rogers v. Tudor Ins. Co.*, 226.

COURTS:

Jurisdiction, supreme court's jurisdiction is appellate in nature except where specific law or precedent has established authority in original action, no authority cited, petition denied. *Jackson v. Tucker*, 318.

Speculation and abstract questions of law, premature and advisory to render decision. *Baker Car & Truck Rental, Inc. v. City of Little Rock*, 357.

Chancellor lacked authority to reopen paternity holding, case reversed. *Flemings v. Littles*, 367.

Dismissal of actions, failure to appear is ground for dismissal. *Florence v. Taylor*, 445.

Dismissal of actions, inherent power of trial courts to dismiss case for failure to pursue it with diligence. *Id.*

Dismissal of actions, trial judge has inherent power to dismiss case for failure to prosecute. *Id.*

Obligation of trial judges to maintain dignity of courts, two unexcused failures to appear for trial showed lack of respect for judicial system. *Id.*

Dismissal of actions, two unexcused failures to attend jury trial showed course of extended neglect or willful disregard of court procedures. *Id.*

CRIMINAL LAW:

Accomplice liability. *Kennedy v. State*, 3.

Voluntariness of custodial confessions, burden of proof. *Id.*

Validity of criminal defendant's waiver of right to remain silent, components considered. *Id.*

Voluntariness of confessions, factors on review. *Id.*

Voluntariness of confession, youth alone insufficient reason to exclude confession. *Id.*

Custodial confession voluntary, trial court did not err in admitting evidence of appellant's statement. *Id.*

Evidence insufficient to declare co-defendant accomplice as matter of law. *Slocum v. State*, 38.

Capital murder, premeditation & deliberation discussed. *Key v. State*, 73.

Voluntariness of confession, factors on review. *Id.*

When confession is invalid, appellant clearly understood his rights. *Id.*

Determining voluntariness of confession, trial court's finding of voluntariness not clearly against preponderance of evidence. *Id.*

Elements of capital murder, "knowingly" and "under circumstances manifesting extreme indifference to human life" defined. *Davis v. State*, 96.

Case inapplicable, capital murder as defined by Ark. Code Ann. § 5-10-101(a)(9) does not require proof of premeditation and deliberation. *Id.*

Substantial circumstantial evidence of child abuse may be sufficient to sustain conviction for capital murder, evidence here sufficient to support conviction. *Id.*

Conviction for possession with intent to deliver, proof of actual sale or transfer not necessary for conviction. *Owens v. State*, 110.

Personal-use exemption in AMCI 2d 6405, when applicable. *Id.*

Use of prohibited weapons, culpable mental state required. *Yocum v. State*, 180.

Accomplice liability, burden of proof. *Choate v. State*, 251.

Merely being a passenger in stolen vehicle not enough to establish constructive possession of vehicle. *Avett v. State*, 320.

State failed to meet its burden of proof, evidence insufficient to support appellant's conviction. *Id.*

Voluntariness of confession, factors considered. *Hill v. State*, 419.

Trial judge in best position to determine voluntariness of confession, no error found. *Id.*

Defendant may be charged and tried for different criminal offenses, even though one is lesser-included offense of other, appellant was convicted of only one of the offenses, double jeopardy inapplicable. *Id.*

Intent necessary to sustain first-degree murder conviction, intent may be inferred from circumstances. *Williams v. State*, 432.

Defense of justification of homicide, proof required. *Id.*

Consent is not defense to first-degree violation of minor, trial court did not abuse discretion in refusing severance. *Domihoo v. State*, 483.

Instruction on lesser-included offense, rational-basis standard. *Brown v. State*, 504.

Lesser-included offense, requirements. *Id.*

Second-degree murder and felony murder distinguished. *Id.*
Effect of failure to include allegations of lesser offense in indictment for greater offense, allegation regarding culpable mental state is necessary element to second-degree-murder charge. *Id.*
Second-degree murder is not lesser-included offense of capital murder. *Id.*
Procedures followed when *Batson* objection raised. *Wooten v. State*, 510.
Batson objection, establishment of prima facie case. *Id.*
Admission of victim-impact evidence, evidence properly admitted. *Id.*

CRIMINAL PROCEDURE:

Postconviction relief, issue of ineffective assistance of counsel raised on direct appeal and addressed. *Johnson v. State*, 44.
Postconviction relief, claim of ineffective assistance of counsel, required showing. *Id.*
Postconviction relief, judicial review of effectiveness of counsel. *Id.*
Postconviction relief, claim of ineffective assistance of counsel, no prejudice from counsel's failure to impeach witness. *Id.*
Postconviction relief, plea negotiations are matter of strategy. *Id.*
Postconviction relief, claim of ineffective assistance of counsel, no basis for communicating plea offer. *Id.*
Prerequisites for affidavit for search warrant, factors considered by magistrate in deciding whether to issue. *Owens v. State*, 110.
Affidavit met requirements, no error found. *Id.*
Appellants clearly manufactured product, personal use exception inapplicable. *Id.*
Municipal court speedy trial violation may be raised in circuit court, speedy trial rule refers only to circuit court. *Whittle v. Washington County Circuit Court*, 136.
Appeal of municipal court judgment to circuit court, when circuit court proceeding does not violate speedy trial rule. *Id.*
Previous decision upheld, no new reasons given for overruling. *Id.*
Postconviction relief, failure to seek particular scientific test does not amount to denial of counsel. *Helton v. State*, 140.
Voluntariness of custodial statement in issue, factors on review. *McCoy v. State*, 155.
Waiver of rights by appellant found voluntary, no error in denying appellant's motion to suppress. *Id.*
Officer's statement of intent to arrest appellant not a threat, appellant's statement voluntarily given. *Id.*
Under totality of circumstances appellant had no valid grounds for suppression of his confession, *Miranda* warnings need not be repeated each time suspect is questioned. *Johnson v. State*, 197.
Miranda safeguards applicable as soon as suspect's freedom of action is curtailed to a degree associated with formal arrest, under facts here officers' repetition of warning was not required. *Id.*
Custodial statements, voluntariness of, review. *Bradford v. State*, 278.
Voluntariness of confession, conflicting testimony, trial court's ruling not clearly erroneous. *Id.*
Custodial statements, appointment of counsel, waiver of *Miranda* rights will not validate subsequent confession. *Id.*
Custodial statements, waiver of *Miranda* rights could not equate to waiver of appointed counsel. *Id.*
Custodial statements, appellate court decision overruled. *Id.*
Reversal dictated by A.R.Cr.P. Rule 8. *Id.*

Criminal defendant has right to be present whenever substantial step is taken in his case, when his presence is considered waived. *Reece v. State*, 465.

Appellant's trial had commenced before he became voluntarily absent, no error in trial court allowing appellant's trial to proceed. *Id.*

Notice of previous conviction, notice given in timely manner. *Mosley v. State*, 469.

Waiver of Rights, requirements. *Esmeyer v. State*, 491.

Waiver of Rights, voluntariness concept discussed. *Id.*

Custodial statements, admissibility, review of totality of circumstances, finding of voluntary waiver correct. *Id.*

Waiver of Rights, accused not subject to further interrogation after invoking right to counsel unless he initiates further communication with police. *Id.*

Custodial statements, admissibility, pertinent inquiry. *Id.*

Custodial statements, spontaneous and voluntarily made. *Id.*

Arrested person's silence may not be used to impeach explanation subsequently offered at trial. *Id.*

Right to silence, no impingement in introduction of waiver form, relevant as corroborative evidence. *Id.*

Right to silence, appellant had not been silent about theory of case, evidence of guilt overwhelming. *Id.*

DEBTOR & CREDITOR:

Debtor entitled to surplus from sale of collateral, trial court correctly determined that requirement to account for any surplus included payment of surplus to appellee. *Bill Fitts Auto Sales, Inc. v. Daniels*, 51.

Meaning of "disposition" in U.C.C. § 9-504. *Id.*

Appellant's construction of statute faulty, provision for disposition of collateral by way of one or more contracts pertains to collateral having more than one unit. *Id.*

Debtor's right to a surplus from disposition of collateral cannot be waived, appellant's argument without merit. *Id.*

DISCOVERY:

Objections to violations must be made at first opportunity, fact that victim could identify appellant was disclosed. *Turner v. State*, 237.

Trial court did not abuse discretion in overruling appellant's objection to discovery violation. *Donihoo v. State*, 483.

Failure to disclose information held by police does not warrant reversal absent prejudice. *Esmeyer v. State*, 491.

Appellant's burden, prejudice does not exist when defendant has access to information that State did not disclose. *Id.*

ESTOPPEL:

Elements necessary for finding of. *Arkansas Dep't of Human Servs. v. Estate of Lewis*, 20.

Availability of defense against State. *Id.*

Application of doctrine against State, clear proof of affirmative misrepresentation required. *Id.*

No affirmative misrepresentation by State, no evidence of reliance upon State's silence. *Id.*

Doctrine not expanded with respect to State, case reversed and remanded. *Id.*

EVIDENCE:

Evidence against appellant properly considered, no error found. *Kennedy v. State*, 3.

- Similarities between bullets constituted circumstantial evidence, evidence not irrelevant simply because it is circumstantial. *Slocum v. State*, 38.
- Testimony relevant, trial court did not abuse discretion in admitting. *Id.*
- Introduction of testimony of other criminal activity, when admissible. *Abernathy v. State*, 61.
- Prior misconduct offered to prove intent or absence of mistake, similarity of circumstances required. *Id.*
- Uncharged act not sufficiently similar to charged offense, trial court abused its discretion in admitting evidence at trial. *Id.*
- Error in admission of uncharged misconduct is not error per se, harmless error test applied to uncharged misconduct errors. *Id.*
- When error will be found harmless and court will affirm. *Id.*
- Evidence erroneously admitted, admission constituted harmless error. *Id.*
- Sufficiency of, factors on review. *Key v. State*, 73.
- Substantial evidence from which jury could conclude appellant acted with premeditated and deliberated purpose, appellant's argument without merit. *Id.*
- Motion for directed verdict a challenge to sufficiency of evidence, factors on review of denial of motion. *Davis v. State*, 96.
- Evidence of previous battery charge properly admitted, no abuse of discretion in trial judge's denial of mistrial motion. *Id.*
- Admission of photographs discretionary, no abuse of discretion found. *Id.*
- Substantial proof of appellant's intent to deliver presented, evidence sufficient to support conviction. *Owens v. State*, 110.
- Review of ruling on motion to suppress, when trial court will be reversed. *Id.*
- Evidence of prior bad acts, when properly admitted. *Id.*
- Witness's testimony concerning prior bad acts independently relevant, rules of evidence not violated. *Id.*
- Probative value of testimony outweighed danger of unfair prejudice, no abuse of discretion found. *Id.*
- Review of sufficiency of evidence, substantial evidence defined. *Yocum v. State*, 180.
- Determination of substantial evidence, permissible to consider only evidence supporting guilty verdict. *Id.*
- Circumstantial evidence may constitute substantial evidence. *Id.*
- Substantial evidence of appellant's culpability. *Id.*
- Trial court did not err in denying appellant's motion for directed verdict. *Id.*
- Substantial evidence defined, determination as to sufficiency of evidence on review. *Anselmo v. Tuck*, 211.
- Prior convictions, trial court's discretion, admissibility decided on case-by-case basis. *Turner v. State*, 237.
- Prior convictions, impeachment. *Id.*
- Prior convictions were extremely probative, trial court did not abuse discretion. *Id.*
- Earlier case overruled for purposes of A.R.E. Rule 609. *Id.*
- Sufficient corroborative evidence presented, first-degree murder conviction affirmed. *Choate v. State*, 251.
- Evidence of motive behind a criminal offense is generally admissible. *Scott v. State*, 267.
- Evidence of gang membership presented in testimony, evidence was relevant to show motive. *Id.*
- Weighing of probative value of evidence against its danger of unfair prejudice left to trial court's discretion, trial court properly admitted evidence of gang affiliation. *Id.*
- One who opens line of questioning cannot later object to it, no prejudicial error where erroneously admitted evidence is cumulative. *Id.*

- Evidence objected to first brought up by defense counsel, evidence cumulative, no prejudice shown. *Id.*
- Motion for directed verdict, challenge to sufficiency of evidence. *Bradford v. State*, 278.
- Review of sufficiency of evidence required prior to review of trial errors. *Id.*
- Review of sufficiency of, substantial evidence defined. *Id.*
- Circumstantial evidence may constitute substantial evidence. *Id.*
- State presented substantial evidence that appellant committed crimes. *Id.*
- Substantial evidence supported conclusion that commercial zoning designation was given for sole purpose of erecting billboards. *Files v. Arkansas State Highway & Transp. Dep't*, 291.
- Evidence of other crimes charged, when admissible. *Hill v. State*, 419.
- Evidence of other crimes charged admissible, evidence relevant to proof of flight. *Id.*
- Admissibility of evidence of flight, evidence admissible even though not occurring immediately after the crime. *Id.*
- Admissibility of, trial court has broad discretion. *Id.*
- Admission and relevancy of photographs, when trial court will be reversed. *Id.*
- Appellant's intent an essential element to crime, admission of photographs not abuse of discretion. *Id.*
- Circumstantial evidence may constitute substantial evidence to sustain guilty verdict, when circumstantial evidence constitutes substantial evidence. *Williams v. State*, 432.
- Evidence sufficient from which jury could infer appellant acted with purpose of causing victim's death, inconsistencies are for jury to resolve. *Id.*
- Exceptions in Ark. R. Evid. 404(B) not exhaustive, when introduction of other criminal activity is permitted. *Mosley v. State*, 469.
- Evidence of prior sexual abuse of victim by defendant, when allowed. *Id.*
- Prior conviction found relevant, prior conviction showed proclivity for unnatural sexual acts with children. *Id.*
- Appellant objected to not being allowed to question victim about pictures, ruling affirmed due to appellant's failure to make offer of proof. *Id.*
- Argument procedurally barred, motion required by Rape Shield Statute not filed. *Id.*
- Failure to proffer evidence of minor's other sexual conduct, no way to determine relevance. *Donihoo v. State*, 483.
- General motion for directed verdict made and not renewed, insufficient-evidence argument not preserved for review. *Id.*
- Character testimony opened door for question of witness about opinion of appellant after viewing videotape. *Id.*
- INJUNCTION:**
- Chancellor has discretion to grant or deny injunction, no abuse of discretion found. *State v. Staton*, 341.
- Granting or denial of, when reversed. *Southwestern Glass Co. v. Arkansas Oklahoma Gas Corp.*, 378.
- Injunction erroneously granted, case reversed and remanded. *Id.*
- INSURANCE:**
- Underinsured motorist coverage, what is required by statute. *Colonia Underwriters Ins. Co. v. Richardson*, 300.
- Uninsured motorist coverage, substituted coverage constitutes new insurance. *Id.*
- No-fault insurance, declaration of insurance issued with substituted vehicle requires a second rejection. *Id.*
- Underinsured motorist coverage, once named insured rejects coverage it need not be offered again. *Id.*

Coverage may not be implied by operation of law when insurer is in compliance with statute, trial court mistaken. *Id.*

Appellee rejected underinsured motorist coverage, no basis existed for coverage to be implied by operation of law. *Id.*

JUDGMENT:

Summary judgment, standard of review. *Sebastian Lake Pub. Util. Co. v. Sebastian Lake Realty*, 85.

Summary judgment, trial court correctly determined that appellant's certificate of public convenience and necessity had been nullified. *Id.*

When judgment notwithstanding verdict may be entered, factors on review on appeal from denial of judgment. *Anselmo v. Tick*, 211.

Appellant failed to meet his burden of proof concerning proximate cause, trial court did not err in denying appellant's motion for judgment notwithstanding the verdict. *Id.*

No substantial evidence tending to establish an issue in appellants' favor, judgment directing verdict for appellee affirmed. *Lakeview Country Club, Inc. v. Superior Prods.*, 218.

Review of summary judgment, factors considered. *Boral Gypsum, Inc. v. Leathers*, 272.

Standard of review of a summary judgment, determination on appeal. *Colonia Underwriters Ins. Co. v. Richardson*, 300.

Summary judgment, standard of review. *Pledger v. Mid-State Constr. & Materials, Inc.*, 388.

Summary judgment, standard of review. *Stoltz v. Friday*, 399.

JUDGES:

Motion requesting disqualification, requirements. *R.J. "Bob" Jones Excavating Contr., Inc. v. Firemen's Ins. Co.*, 42.

Motion requesting disqualification, Ark. Sup. Ct. R. 6-4 not controlling, party should not delay filing until he receives unfavorable ruling. *Id.*

No conflict of interest warranting disqualification, motion denied. *Id.*

Recusal, presumption of impartiality. *Turner v. State*, 237.

Recusal, within trial court's discretion, proof of abuse of discretion. *Id.*

Recusal, trial judge did not abuse discretion in not recusing. *Id.*

JURISDICTION:

Reasoning behind rejection of appellant's argument, reasoning of cases cited in *Pledger v. Bosnick. State v. Staton*, 341.

Class certification proper, chancellor had jurisdiction over claim's subject matter. *Id.*

JURY:

Instructions, giving of instruction proper when supported by evidentiary basis, instruction mirrored statutory definition. *Yocum v. State*, 180.

Instructions, no error in refusing to give instruction where there is no basis in evidence. *Id.*

Instructions, trial court did not err in refusing to give affirmative-defense instruction. *Id.*

Selection of jury, elements needed to prove *prima facie* case of discrimination as to jury selection. *Davis v. State*, 194.

Appellant failed to meet his burden of proof, trial court's denial of appellant's motion to quash was affirmed. *Id.*

Did not have to believe that appellant acted only out of duress. *Bradford v. State*, 278.

Instructions, where evidence to support instruction is before jury that instruction must be given. *Id.*

Appellant has burden of proving venireman unqualified, test used for juror bias determination. *Randolph v. ER Arkansas, P.A.*, 373.

Juror qualification within trial court's discretion, when trial court will be reversed. *Id.*

No error to refuse proffered non-AMI instruction, language in instruction that was allowed more than sufficient. *Id.*

Court may order sequestered *voir dire* at its discretion, no abuse of discretion found. *Hill v. State*, 419.

Refusal to give instruction on emotional disturbance, no error found. *Id.*

Presumed unbiased and qualified to serve, qualification for trial court to decide. *Esmeyer v. State*, 491.

Any assertion that jury was tainted was speculative, did not rise to level necessary for reversal. *Id.*

Prosecution's use of peremptory challenge to remove only black prospective juror may establish prima facie case, when issue of prima facie showing becomes moot. *Wooten v. State*, 510.

LANDLORD & TENANT:

Perpetual renewal, right not conferred unless language is so plain as to admit no doubt of purpose, leases provided for no automatic term extensions. *Baker Car & Truck Rental, Inc. v. City of Little Rock*, 357.

LEGISLATURE:

No power retrospectively to abrogate judicial pronouncements. *Pledger v. Mid-State Constr. & Materials, Inc.*, 388.

LIMITATION OF ACTIONS:

Appellant's action against appellee law firm barred, when statute begins to run for malpractice. *Stoltz v. Friday*, 399.

Attorney's acts during probate of estate, separate and distinct transactions, traditional limitations rule upheld. *Id.*

Dispute over running of statute irrelevant with respect to appellant's claim. *Id.*

MISTRIAL:

Comment not improper, mistrial not merited. *Ferrell v. State*, 455.

Comment by State's witness insufficient grounds for mistrial, trial court's decision to deny upheld. *Id.*

When proper to grant, standard of review on appeal. *Mosley v. State*, 469.

Mistrial motion denied, no abuse of discretion shown. *Id.*

When granted. *Carter v. State*, 477.

Denial of motion based on several factors, no error found. *Id.*

MOTIONS:

Motion to dismiss denied, appellant waived his claim of error. *Bill Fitts Auto Sales, Inc. v. Daniels*, 51.

Motion to dismiss properly denied, sufficient evidence existed upon which trial court could base its judgment. *Id.*

Directed verdict motion discussed, substantial evidence defined, factors on review. *Owens v. State*, 110.

Directed verdict, challenge to sufficiency of evidence. *Yocum v. State*, 180.

Review of motion to suppress. *Id.*

Motion to suppress, evidence favorable to appellee is reviewed. *Johnson v. State*, 197.

Motion for directed verdict, factors on review. *Lakeview Country Club v. Superior Prods.*, 218.

Posttrial hearing, trial court did not err in refusing to grant. *Turner v. State*, 237.

Denial of motion for directed verdict, factors on review. *Choate v. State*, 251.

Motion to dismiss, trial court did not err in granting appellee bank's motion, statute of limitations had run, estate not damaged by inaction of bank. *Stoltz v. Friday*, 399.

Motion for continuance, factors considered. *Hill v. State*, 419.

Motions for continuance properly denied, appellant failed to act with diligence. *Id.*

Motion for directed verdict, standard of review. *Williams v. State*, 432.

Review of denial of motion for directed verdict, jury's verdict supported by substantial evidence. *Id.*

Movant has burden to show good cause for continuance, no prejudice shown by trial court's denial of motion. *Ferrell v. State*, 455.

Review of denial of motions for continuance, denial of last of series of motions for continuance not abuse of discretion. *Carter v. State*, 477.

NEGLIGENCE:

Burden of proof upon assertion of, proof necessary to make prima facie case of negligence. *Anselmo v. Tuck*, 211.

Proximate cause defined, when proximate cause becomes question of law. *Id.*

PARENT & CHILD:

Attempt to invalidate twelve-year-old paternity proceedings, court will not go behind judgment which is valid on its face. *Flemings v. Littles*, 367.

PARTIES:

Appellant's identification of group members and refund to them burdensome, solution reached by chancellor proper. *State v. Staton*, 341.

PLEADING:

Fact pleading required, dismissal for failure to state facts. *Malone v. Trans-States Lines, Inc.*, 383.

Motion to dismiss, test for sufficiency of complaint. *Id.*

Failure to plead facts, dismissal without prejudice proper, order modified. *Id.*

Amendments, trial court vested with broad discretion in allowing or denying, trial court did not abuse discretion. *Stoltz v. Friday*, 399.

PRODUCTS LIABILITY:

Breach of warranty of merchantability, what is necessary to sustain claim of. *Lakeview Country Club, Inc. v. Superior Prods.*, 218.

Factors necessary to sustain claim for breach of implied warranty of merchantability not present, argument disposed of summarily. *Id.*

No proof product not fit for purpose stated by appellants, trial court did not err in directing verdict for appellee. *Id.*

PROHIBITION:

Petitioner must produce record showing writ is clearly warranted. *Gardner v. Rogers*, 415.

Extraordinary writ, when issued. *Id.*

Petition denied. *Id.*

When properly granted. *State v. Wilcox*, 429.

Writ improperly granted, municipal court had jurisdiction to try appellant. *Id.*

PUBLIC SERVICE COMMISSION:

Authority of, jurisdiction properly in circuit court. *Southwestern Glass Co. v. Arkansas Oklahoma Gas Corp.*, 378.

REMEDIES:

When writ of error coram nobis is appropriate, petition for writ denied. *Davis v. State*, 96.

SEARCH & SEIZURE:

Mere conclusion in affidavit will not support issuance of nighttime warrant, sufficient factual basis existed for nighttime search. *Owens v. State*, 110.

Circumstances existed to justify nighttime search, failure to circle time option on warrant not fatal. *Id.*

Motion to suppress, standing to challenge a search necessary. *McCoy v. State*, 155.

No proof appellant had legitimate expectation of privacy in car, trial court's ruling affirmed. *Id.*

Seizure within meaning of Fourth Amendment, examples of. *Johnson v. State*, 197.

SENTENCING:

Imposition of harsher sentence on retrial not constitutionally offensive, jury should not be informed of prior sentences on retrial. *Owens v. State*, 110.

Jury aware of previous trial's existence, no proof jury aware of result of first trial. *Id.*

Appellant's argument meritless, no error alleged in sentencing phase of trial. *Williams v. State*, 432.

STATUTES:

Act did not impose duty on state agency to inform Medicaid recipients of its right to file claims for benefits paid. *Arkansas Dep't of Human Servs. v. Estate of Lewis*, 20.

Interpretation of, construction of legislative intent. *Bill Fitts Auto Sales, Inc. v. Daniels*, 51.

Construction, ascertaining legislative intent. *Rogers v. Tudor Ins. Co.*, 226.

Direct-action statute, elements necessary for application. *Id.*

Direct-action statute, General Assembly did not equate "carrying" liability insurance with "covering" corporation, liberal construction. *Id.*

Direct-action statute, officers and directors of nonprofit corporation were "servants, agents, or employees" under statute. *Id.*

Direct-action statute, appellee insurance company subject to direct cause of action, reversed and remanded. *Id.*

Conflicts with court rules resolved in favor of rules. *Benton v. State*, 246.

Construction of, basic rule. *Citizens to Establish a Reform Party v. Priest*, 257.

Words inadvertently left in statute may be disregarded, repeal of one act may render provisions of another act meaningless. *Id.*

Language in statute included by mistake, codification error cannot be allowed to circumvent legislative intent. *Id.*

Interpretation of law which leads to absurd result will not be adopted, legislature did not intend to except presidential primaries from application of new party petition deadlines. *Id.*

Conflicting deadlines existed in statutes, "last passed" rule inapplicable, intent of Legislature must be given effect. *Id.*

Amendments to law, those portions of a law that are retained and not amended are not considered new enactments. *Id.*

Construction of statutes to divine intent of legislature, January deadline served legislative intent. *Id.*

May deadline unworkable, interpretation of statute which leads to unworkable consequences will be rejected. *Id.*

Deadline contained in Ark. Code Ann. § 7-7-203(g) best reflected legislature's intent, appellants failed to timely qualify as new political party. *Id.*

Arkansas Highway Beautification Act, purpose. *Files v. Arkansas State Highway & Transp. Dep't*, 291.

Arkansas Highway Beautification Act, broadly construed, Highway Commission vested with regulatory authority to enforce act. *Id.*

Interpretation of, court must give effect to intent of General Assembly. *State v. Staton*, 341.

Primary rule is to give effect to intent of legislature. *Pledger v. Mid-State Constr. & Materials, Inc.*, 388.

Special act applicable to particular case excludes operation of general act, general isolated-sale exemption not applicable to sale of used vehicles. *Id.*

Amendment of act does not control interpretation of another statute. *Id.*

Determination of legislative intent. *Id.*

Intent of General Assembly, private sale of used motor vehicles subject to sales tax, isolated-sales exemption not applicable, trial court erred in granting summary judgment to appellee, reversed and remanded. *Id.*

Construction of, effect given to intent of legislature. *Wooten v. State*, 510.

TAXATION:

Transportation costs, when they constitute part of gross receipts of sale subject to gross-receipts tax. *Boral Gypsum, Inc. v. Leathers*, 272.

Partial cash payments of tariff not subject to use tax, in-kind payment of compressor fuel not taxable. *Id.*

Transaction not taxable under use tax, trial court erred in granting summary judgment to appellee. *Id.*

Voluntary payment of tax, when recoverable. *State v. Staton*, 341.

Appellant's interpretation strained, statute's meaning clear. *Id.*

Tax-exemption cases, rules of construction, standard of review. *Pledger v. Mid-State Constr. & Materials, Inc.* 388.

TORTS:

Strict liability requires proof that product is defective, when such proof not needed. *Lakeview Country Club, Inc. v. Superior Prods.*, 218.

Strict-liability argument meritless, no proof presented that product was defective. *Id.*

TRIAL:

Competency to stand trial, test for determining competency. *Key v. State*, 73.

Appellant knew he had been charged with murder, substantial evidence existed that appellant was competent to stand trial. *Id.*

Mistrial a drastic remedy, trial judge's denial of mistrial not disturbed absent an abuse of discretion. *Davis v. State*, 96.

Law of the case inapplicable, during course of a single trial, judge may reconsider his prior rulings. *Id.*

Mistrial motion denied, no error found. *Owens v. State*, 110.

Mistrial an extreme remedy, mistrial not warranted. *Id.*

Mistrial, when proper. *Johnson v. State*, 197.

Mistrial properly denied, no abuse of discretion found. *Id.*

Mistrial, drastic remedy, within trial court's discretion. *Turner v. State*, 237.
Mistrial, motion was not timely, no prejudice to appellant, mistrial not warranted. *Id.*
Mere filing of motion does not continue jury trial, counsel should have known dismissal might be consequence of actions. *Florence v. Taylor*, 445.
Mistrial is drastic remedy, trial court has broad discretion. *Esmeyer v. State*, 491.
Mistrial motions must be made at first opportunity. *Id.*

TRUSTS:

Imposition of constructive trust, factors on review. *Nichols v. Wray*, 326.
Imposition of constructive trust proper, evidence indicated decedent's intention for daughters to share equally. *Id.*

WILLS:

Review of probate cases, burden of proof. *Wells v. Estate of Wells*, 16.
Testimony clearly put possibility of duress and undue influence into issue, probate judge not clearly erroneous in refusing to probate will. *Id.*
Revocation of, will not revoked by trust instrument. *Id.*

WITNESSES:

Jury not required to believe all or even part of witness's testimony, verdict may be based upon common sense. *Davis v. State*, 96.
Omission of witness whose testimony is cumulative does not deprive defense of vital evidence. *Helton v. State*, 140.
Conflicts in testimony, credibility issue for trial court to resolve. *McCoy v. State*, 155.

WORKERS' COMPENSATION:

Criteria for determining Second Injury Trust Fund liability. *Hawkins Constr. Co. v. Maxell*, 133.
Second Injury Trust Fund, meaning of "impairment". *Id.*
Impairment suffered in first injury contributed to current compensable injury, Commission's decision not supported by the evidence. *Id.*
Supreme court review. *Gansky v. Hi-Tech Eng'g*, 163.
Reasonable and necessary treatment, question of fact for Commission. *Id.*
Standard of review. *Id.*
Credibility of witnesses within province of Commission. *Id.*
Temporary aggravation of pre-existing condition is compensable injury. *Id.*
Fair-minded persons could not decide that additional medical treatment was not reasonably necessary or that appellant's healing period had ended. *Id.*
Decision of court of appeals reversed, matter remanded to Commission. *Id.*
Test used to determine whether Second Injury Fund must compensate injured worker. *POM, Inc. v. Taylor*, 334.
Use of wage-loss evidence in determining Second Injury Fund Liability, ability to work may be used to corroborate medical evidence. *Id.*
Substantial evidence supported Commission's decision, Second injury Fund not liable. *Id.*

Index to
Acts, Codes, Constitutional
Provisions, Rules, and
Statutes Cited

—

—

INDEX TO
ACTS, CODES, CONSTITUTIONAL PROVISIONS,
INSTRUCTIONS, RULES, AND
STATUTES CITED

ACTS:	Act 241 of 1991 265
	Act 683 of 1991 105
	Act 415 of 1993 21, 22, 23, 25
	Act 796 of 1993 387
Acts by Name:	Act 11 of the First Extraordinary
	Session of 1995 Appx.
Arkansas Civil Rights	Act 268 of 1995 397
Act of 1993 261, 267, 315, 384,	Act 268 of 1995, § 6 397
385, 386, 387, 388	Act 268 of 1995, § 7 397
Arkansas Compensation Tax	Act 527 of 1995 306
Act of 1949 394	Act 901 of 1995 263, 264, 265
Arkansas Gross Receipts	Act 946 of 1995 264, 265
Act of 1941 391, 393, 394	Act 943 of 1995 264
Arkansas Gross Receipts	Act 963 of 1995 264, 265
Act 345, 396	
Arkansas Highway Beautification	
Act 291, 292, 295, 296,	
297, 298	
Arkansas Gas Pipeline	
Code 379, 382	
Federal Highway Beautification	
Act of 1965 291, 296	
National Voter Registration	
Act of 1993 264	
U.S. Department of Transportation	
Pipeline Safety Regulations .. 379, 382	
Arkansas Acts:	
Act 386 of 1941 395	
Act 54 of 1945 393, 394	
Act 487 of 1949 394, 395	
Act 19 of 1957 391, 394, 395, 396	
Act 260 of 1959 391, 394, 395	
Act 260 of 1959, § 3 394, 395	
Act 261 of 1971 261	
Act 347 of 1971 261	
Act 829 of 1971 261	
Act 888 of 1977 262	
Act 37 of the First Extraordinary	
Session of 1987 88, 91	
Act 52 of the First Extraordinary	
Session of 1987 105	
Act 123 of 1987 262, 263, 264, 265	
Act 248 of 1987 257, 262, 263, 264,	
265, 266	
Act 248 of 1987, § 1 262	
Act 21 of the First Extraordinary	
Session of 1988 91	
Act 700 of 1989 263, 264	
Act 3 of 1991 391, 397	
Act 3 of 1991, § 6 391	
	Act 241 of 1991 265
	Act 683 of 1991 105
	Act 415 of 1993 21, 22, 23, 25
	Act 796 of 1993 387
	Act 11 of the First Extraordinary
	Session of 1995 Appx.
	Act 268 of 1995 397
	Act 268 of 1995, § 6 397
	Act 268 of 1995, § 7 397
	Act 527 of 1995 306
	Act 901 of 1995 263, 264, 265
	Act 946 of 1995 264, 265
	Act 943 of 1995 264
	Act 963 of 1995 264, 265
	CODES:
	(See also RULES and STATUTES)
	Arkansas Code Annotated:
	1-2-103 396
	4-9-501 57
	4-9-502(2) 58
	4-9-504 52, 53, 55, 57
	4-9-504(1) 55
	4-9-504(1)(a) 56
	4-9-504(2) 52, 53, 54, 55,
	58
	4-9-504(3) 52, 56
	4-9-505 57
	4-9-506 57
	4-27-841 235
	4-33-801(b) 228, 235
	4-86-102(a)(2) 223
	5-2-202(2) 104
	5-2-203(b) 181, 186
	5-2-302 79, 80
	5-2-304 79
	5-2-403 255
	5-2-403(a) 6
	5-2-607 438
	5-4-501 435, 442
	5-4-602(4) 442,
	511, 516, 517
	5-4-604 516
	5-10-101 5, 6, 507
	5-10-101(a)(1) 5, 438, 505, 509
	5-10-101(a)(4) 76
	5-10-101(a)(9) 96, 103, 105

5-10-102(a)(2)	436, 437	16-90-111	246, 247, 248
5-10-103	508	16-114-203(a)	209
5-10-112(a)(2)	65	16-123-101	387
5-14-103(a)(3)	487	16-123-101-108	267, 384
5-14-120	487, 488	16-123-102(3)	386
5-36-106	320	16-123-107	387
5-36-106(a)	322	20-76-436	21, 22
5-36-106(b)	322	23-1-101	90, 91
5-39-201(a)(1)	323	23-1-101(6)	89
5-39-203	188, 189	23-3-114	87
5-64-101-108	508	23-3-201(a)	89, 91
5-64-101(v)	122	23-15-201-214	379, 382
5-64-401(d)	116	23-32-1005	328
5-64-408(a)	114	23-32-1005(1)(A)	330
5-65-118	430, 431	23-32-1005(2)(A)	327, 330, 331
5-65-118(a)(1)	430	23-32-1005(2)(C)	327, 329, 330, 331
5-73-104	181, 183, 186, 190	23-79-210	227, 228, 229, 232,
5-73-104(a)	182, 183, 186, 187,		233, 234
	189	23-79-210(a)(1)	235, 236
5-73-104(b)(2)	190	23-89-202	305
7-1-101(1)(A)	259	23-89-203	300, 305, 307
7-1-101(1)(B)	257, 258, 259, 260,	23-89-203(a)(1)	305
	261, 262, 263, 264,	23-89-203(b)	306
	266	23-89-209	300, 301, 308
7-5-418(a)	266	23-89-209(a)	300, 304
7-7-104(a)(1)	267	23-89-209(2)	302
7-7-203(c)	266	23-89-403	304
7-7-203(d)	266	23-89-403(b)	305
7-7-203(g)	257, 258, 259, 260,	26-18-406	275
	261, 262, 263, 264,	26-18-507	346, 355, 356
	265, 266, 267	26-18-507(a)	343, 352, 356
7-7-305(b)	266	26-18-507(b)	356
7-8-302	259	26-18-507(c)	356
9-10-108	369	26-18-507(c)(2)(A)	346
9-10-115	369, 371, 372	26-52-101	396
9-10-115(c)(1)	367, 370, 372	26-52-301	349, 350
9-10-120	369	26-52-301(c)(i)	350
9-27-317	10	26-52-401	397
9-27-318(b)(1)	250	26-52-401(17)	390, 391, 392, 393
11-9-101-1001	384	26-52-510(d)	396
11-9-107	385, 387, 388	26-53-101-138	275
11-9-508(a)	163, 168	26-53-102(6)(A)	276
11-9-525(a)(1)	135, 335	26-53-106(a)	273, 277
11-9-525(a)(2)	335	26-53-126(f)	396
11-19-107	387	27-74-101 et seq.	291, 296
14-236-101	70	27-74-201	297
14-236-106	68, 70	27-74-203	291, 297
14-236-118	70	27-74-204	297
16-15-109	174	27-74-204(a)(1)	297
16-15-109(a)(1)	175	27-74-211(b)	291, 297
16-15-109(b)	174, 175	28-25-103	17
16-17-207	131, 133	28-25-109	16, 19, 20
16-22-309(a)(1)	68, 70	28-39-401	19
16-32-103	194, 196		
16-32-103(a)	195	Arkansas Code of Judicial Conduct:	
16-56-105	13, 399, 405	Canon 3E(1)	244
16-56-126	209		

Code of Federal Regulations:

23 C.F.R. § 750.708(b) 298
 23 C.F.R. § 750.708(d) 298
 42 C.F.R. § 433.36 25
 42 C.F.R. § 433.36(d) 25

Uniform Commercial Code:

9-504 52, 57
 9-504(2) 52, 55

United States Code:

23 U.S.C. § 131 et seq. 291, 296
 23 U.S.C. § 131(b) 296
 23 U.S.C. § 131(d) 297
 42 U.S.C. § 1396 p(b) 25
 42 U.S.C. §§ 1973gg — gg-10 264

CONSTITUTIONAL PROVISIONS:

Arkansas Constitution:

Art. 2, § 8 203
 Art. 2, § 10 138
 Art. 5, § 9 178
 Art. 5, § 20 341, 345
 Amend. 7 319

United States Constitution:

Amend. 4 155, 159, 197, 199,
 200, 202, 203
 Amend. 5 159, 203, 205, 281,
 285
 Amend. 6 27, 29, 138, 139,
 140, 142, 144, 151,
 159, 194, 195, 203,
 205, 279, 280, 281,
 286, 287, 288, 289
 Amend. 8 440, 465, 466
 Amend. 14 138, 187, 203
 Due Process Clause 440, 511
 Equal Protection Clause 440
 Ex Post Facto Clause 434, 441

INSTRUCTIONS:

Arkansas Model Jury Instructions
 (Civil):

AMI 1501 373, 377, 378

Arkansas Model Jury Instructions
 (Criminal):

AMCI 2d 403 39, 40
 AMCI 2d 601 290
 AMCI 2d 6405 112, 113, 123, 124

AMI Crim. 2d 403 254, 255
 AMI Crim. 3104 189

RULES:

Arkansas Rules of Appellate
 Procedure (Ark. Code Ann. Court
 Rules [1995]):

Rule 2(a)(9) 345
 Rule 3(e) 226, 227, 230, 231,
 232
 Rule 6(d) 31
 Rule 6(e) 31

Arkansas Rules of Appellate
 Procedure — Criminal:

Rule 16 27, 28, 29

Arkansas Rules of Civil
 Procedure (Ark. Code Ann. Court
 Rules [1995]):

A.R.C.P. 4 208, 210
 A.R.C.P. 4(1) 200
 A.R.C.P. 6 210
 A.R.C.P. 8(a)(1) 383, 386
 A.R.C.P. 8(f) 386
 A.R.C.P. 11 68, 69, 70
 A.R.C.P. 12(b) 232
 A.R.C.P. 12(b)(6) 227, 229, 232,
 383, 385, 386, 387
 A.R.C.P. 12(c) 232
 A.R.C.P. 12(h)(1) 408
 A.R.C.P. 15(a) 408
 A.R.C.P. 23 341, 345
 A.R.C.P. 23(a) 344
 A.R.C.P. 24(a) 129, 132

Arkansas Rules of Criminal
 Procedure (Ark. Code Ann. Court
 Rules [1995]):

A.R.Cr.P. 1.2 137, 139
 A.R.Cr.P. 2.3 197, 199, 202, 203,
 205, 206, 207
 A.R.Cr.P. 3.1 203
 A.R.Cr.P. 4 203
 A.R.Cr.P. 4.1 182, 188
 A.R.Cr.P. 8 280, 290
 A.R.Cr.P. 8.2 280, 290
 A.R.Cr.P. 8.3 280, 290
 A.R.Cr.P. 13.1 203
 A.R.Cr.P. 13.1(b) 111, 120
 A.R.Cr.P. 13.2(c) 118
 A.R.Cr.P. 17.1 241, 245
 A.R.Cr.P. 17.1(a)(ii) 203
 A.R.Cr.P. 19.7 198, 204

A.R. Cr.P. 27—30.....	138	Rule 4-1.....	414
A.R. Cr.P. 28.....	139	Rule 4-1(a).....	528
A.R. Cr.P. 28.1.....	37, 137, 138, 139	Rule 4-1(b).....	411, 414, 528
A.R. Cr.P. 28.3.....	37	Rule 4-2.....	414, 526
A.R. Cr.P. 30.1.....	138	Rule 4-2(a)(2).....	531
A.R. Cr.P. 33.3.....	245	Rule 4-2(a)(2—7).....	531
A.R. Cr.P. 36.22.....	238, 245	Rule 4-2(a)(6).....	13, 15, 72, 82, 83, 173, 175, 177, 179, 314, 413
A.R. Cr.P. 37.....	40, 44, 48, 59, 93, 94, 141, 145, 147, 148, 149, 151, 153, 154, 246, 247, 248, 314, 412, 418, 533	Rule 4-2(a)(7).....	528
A.R. Cr.P. 37.1.....	143	Rule 4-2(b).....	72, 85, 174, 177
A.R. Cr.P. 37.2(b).....	246, 248	Rule 4-2(b)(2).....	14, 72, 82, 179, 411, 412, 413, 414
A.R. Cr.P. 37.2(c).....	247, 248	Rule 4-2(h).....	71
Arkansas Rules of Evidence (Ark. Code Ann. Court Rules [1995]):		Rule 4-3(b).....	35
A.R.E. 403.....	65, 107, 108, 112, 121, 123, 268, 270, 326	Rule 4-3(h).....	12, 42, 67, 81, 99, 123, 126, 162, 256
A.R.E. 404(b).....	61, 64, 97, 107, 108, 111, 112, 121, 122, 237, 243, 326	Rule 4-3(j)(1).....	28
A.R.E. 410.....	113, 126	Rule 6-1.....	319
A.R.E. 609.....	237, 238, 241, 242, 243, 325, 326	Rule 6-1(a).....	319
A.R.E. 609(a).....	242	Rule 6-1(c).....	319
A.R.E. 615.....	314	Rule 6-1(e).....	319
Rules of the Arkansas Supreme Court and Court of Appeals (Ark. Code Ann. Court Rules [1995]):		Rule 6-4.....	42, 43
Rule 1-2.....	525	Rule 6-5.....	319
Rule 1-2(a).....	529	Rule 6-7.....	32
Rule 1-2(a)(2).....	75, 157	Rule 9.....	413
Rule 1-2(a)(3).....	384	Rule 9(c)(2).....	180, 412
Rule 1-2(a)(5).....	143	Rule 9(d).....	180
Rule 1-2(a)(6).....	318	Department of Finance and Administration Gross-Receipts Tax Regulations:	
Rule 1-2(a)(16).....	212, 220	GR-49(c).....	391, 398
Rule 1-2(a)(17).....	529, 530	STATUTES:	
Rule 1-2(c).....	538	Criminal Use of Prohibited Weapons Statute.....	190
Rule 1-2(c)(1)(C).....	538	Direct Action Statute.....	227, 228, 229, 232, 234, 235
Rule 1-2(d)(1).....	220	Rape Shield Statute.....	475, 476
Rule 1-2(f).....	163, 164, 168	Arkansas Statutes Annotated:	
Rule 2-2.....	527	34-705.1.....	368, 371
Rule 2-4.....	530	66-4003.....	305
Rule 2-4(c).....	530, 531	84-1903.....	395
		84-3105.....	395

ARKANSAS
APPELLATE
REPORTS

Volume 54

CASES DETERMINED
IN THE

Court of Appeals
of Arkansas

FROM
May 29, 1996 — September 11, 1996
INCLUSIVE

WILLIAM B. JONES, JR.
REPORTER OF DECISIONS

CINDY M. ENGLISH
ASSISTANT
REPORTER OF DECISIONS

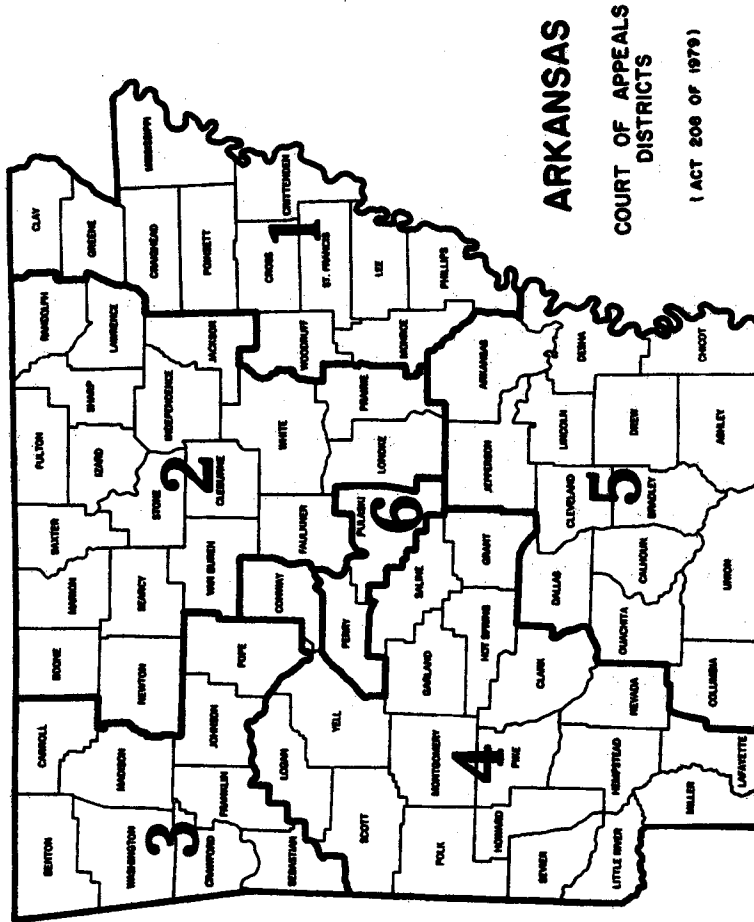
PUBLISHED BY THE
STATE OF ARKANSAS
1996

Set in Bembo

DARBY PRINTING COMPANY
6215 PURDUE DRIVE
ATLANTA, GEORGIA 30336
1996

CONTENTS

	Page
MAP OF DISTRICTS FOR COURT OF APPEALS	iv
JUDGES AND OFFICERS OF THE COURT OF APPEALS	v
TABLE OF CASES REPORTED	
Alphabetical	vi
Opinions by Respective Judges of Court of Appeals and Per Curiam Opinions	xi
STANDARDS FOR PUBLICATION OF OPINIONS	
Rule 5-2, Rules of the Supreme Court and Court of Appeals	xiv
TABLE OF OPINIONS NOT REPORTED	xvi
TABLE OF CASES AFFIRMED WITHOUT WRITTEN OPINION	xxiv
OPINIONS REPORTED	1
INDEX	
Alphabetical Headnote Index	406
References to Acts, Codes, Constitutional Provisions, Rules, and Statutes	416



JUDGES AND OFFICERS OF THE COURT OF APPEALS OF ARKANSAS

DURING THE PERIOD COVERED
BY THIS VOLUME
(May 29, 1996 —
September 11, 1996, inclusive)

JUDGES

JOHN E. JENNINGS	Chief Judge ¹
JOHN MAUZY PITTMAN	Judge ²
JAMES R. COOPER	Judge ³
JOHN B. ROBBINS	Judge ⁴
MELVIN MAYFIELD	Judge ⁵
JUDITH ROGERS	Judge ⁶
JOHN F. STROUD, JR.	Judge ⁷
OLLY NEAL	Judge ⁸
WENDELL L. GRIFFEN	Judge ⁹

OFFICERS

WINSTON BRYANT	Attorney General
LESLIE W. STEEN	Clerk
JACQUELINE S. WRIGHT	Librarian
WILLIAM B. JONES, JR.	Reporter of Decisions

¹District 3.

²District 1.

³District 2.

⁴District 4.

⁵District 5.

⁶District 6.

⁷Position 7.

⁸Position 8.

⁹Position 9.

TABLE OF CASES REPORTED

A

Abernathy <i>v.</i> Weldon, Williams and Lick, Inc.	108
Adair <i>v.</i> Adair	9
Adair (Adair <i>v.</i>)	9
American Transp. (Foxx <i>v.</i>)	115
Amfuel (Hanson <i>v.</i>)	370
Arkansas Trucking Servs. (Lytle <i>v.</i>)	73
Arkansas Pub. Serv. Comm'n (Bryant <i>v.</i>)	157
Arkmo Lumber Co. (Stafford <i>v.</i>)	286
Atkins Nursing Home <i>v.</i> Gray	125

B

Bennett <i>v.</i> State	154
Bethel Baptist Church <i>v.</i> Church Mut. Ins. Co.	262
Boyd <i>v.</i> State	17
Branch <i>v.</i> Carter	70
Brewer (Hartford Ins. Co. <i>v.</i>)	1
Britain (Southern Hospitalities <i>v.</i>)	318
Brown <i>v.</i> Director	205
Brown <i>v.</i> State	44
Brunson <i>v.</i> State	248
Bryant <i>v.</i> Arkansas Pub. Serv. Comm'n	157

C

Caldarera (Pilgrims Pride Corp. <i>v.</i>)	92
Carraro <i>v.</i> Director	210
Carroll Gen. Hosp. <i>v.</i> Green	102
Carter (Branch <i>v.</i>)	70
Cedar Chems. (Estes <i>v.</i>)	311
Christian <i>v.</i> State	191
Church Mut. Ins. Co. (Bethel Baptist Church <i>v.</i>)	262

Collins <i>v.</i> Treadwell	100
Crawford County Memorial Hosp. (<i>Cross v.</i>)	130
Cross <i>v.</i> Crawford County Memorial Hosp.	130

D

Darling Store Fixtures <i>v.</i> McDonald	60
Director (<i>Brown v.</i>)	205
Director (<i>Carraro v.</i>)	210
Director (<i>White v.</i>)	197
Dubois (<i>Farmland Ins. Co. v.</i>)	141
Dugan <i>v.</i> Jerry Sweetser, Inc.,	401

E

Easterling <i>v.</i> Weedman	22
Estes <i>v.</i> Cedar Chems.	311
Eveland <i>v.</i> State	393

F

Farmer <i>v.</i> State	66
Farmland Ins. Co. <i>v.</i> Dubois	141
Fields <i>v.</i> Ginger	216
Foxx <i>v.</i> American Transp.	115

G

Gerber Products (<i>Smith v.</i>)	57
Ginger (<i>Fields v.</i>)	216
Gray (<i>Atkins Nursing Home v.</i>)	125
Green (<i>Carroll Gen. Hosp. v.</i>)	102
Green <i>v.</i> Smith & Scott Logging	53

H

Hanson <i>v.</i> Amfuel	370
Hartford Ins. Co. <i>v.</i> Brewer	1
Hill <i>v.</i> State	380

J

Jerry Sweetser, Inc. (Dugan <i>v.</i>)	401
Jones <i>v.</i> Ray	336
Jones <i>v.</i> State	150

K

Kahler (Southern Steel & Wire <i>v.</i>)	376
---	-----

L

Lindsey (State Farm Mut. Auto. Ins. Co. <i>v.</i>)	390
Lindsey <i>v.</i> State	266
Lytle <i>v.</i> Arkansas Trucking Servs.	73

M

Maglothin <i>v.</i> State	146
McDonald (Darling Store Fixtures <i>v.</i>)	60
McNeely <i>v.</i> State	298
Milton <i>v.</i> State	96

N

Nix <i>v.</i> State	302
---------------------------	-----

P

Pettie (Southern Farm Bureau Cas. Ins. Co. <i>v.</i>)	79
Pierce Bros. Constr. (Weldon <i>v.</i>)	344
Pilgrims Pride Corp. <i>v.</i> Calderera	92
Purvis (Vanzant <i>v.</i>)	384

R

Ramey <i>v.</i> State Farm Mut. Automobile Ins. Co.	307
Ray (Jones <i>v.</i>)	336
Robertson <i>v.</i> State	230

S

Smith & Scott Logging (Green <i>v.</i>).....	53
Smith <i>v.</i> Gerber Products.....	57
Southern Farm Bureau Cas. Ins. Co. <i>v.</i> Pettie	79
Southern Hospitalities <i>v.</i> Britain	318
Southern Steel & Wire <i>v.</i> Kahler.....	376
Stafford <i>v.</i> Arkmo Lumber Co.	286
State (Bennett <i>v.</i>)	154
State (Boyd <i>v.</i>)	17
State (Brown <i>v.</i>)	44
State (Brunson <i>v.</i>)	248
State (Christian <i>v.</i>)	191
State (Eveland <i>v.</i>)	393
State Farm Mut. Automobile Ins. Co. (Ramey <i>v.</i>)	307
State Farm Mut. Auto. Ins. Co. <i>v.</i> Lindsey.....	390
State (Farmer <i>v.</i>).....	66
State (Hill <i>v.</i>).....	380
State (Jones <i>v.</i>)	150
State (Lindsey <i>v.</i>)	266
State (Maglothin <i>v.</i>)	146
State (McNeely <i>v.</i>)	298
State (Milton <i>v.</i>)	96
State (Nix <i>v.</i>)	302
State (Robertson <i>v.</i>).....	230
State (Williams <i>v.</i>)	271
State (Williams <i>v.</i>)	352
Steed (Stone <i>v.</i>).....	11
Stone <i>v.</i> Steed	11
Sweetser, Inc. (Dugan <i>v.</i>)	401

T

Treadwell (Collins <i>v.</i>)	100
--------------------------------------	-----

V

Vanzant <i>v.</i> Purvis	384
--------------------------------	-----

W

Weedman (Easterling <i>v.</i>)	22
Weldon <i>v.</i> Pierce Bros. Constr.	344
Weldon, Williams and Lick, Inc. (Abernathy <i>v.</i>)	108
White <i>v.</i> Director	197
Williams, Houston <i>v.</i> State	271
Williams, Houston <i>v.</i> State	352

OPINIONS DELIVERED BY THE RESPECTIVE
 JUDGES OF THE ARKANSAS COURT OF APPEALS
 DURING THE PERIOD COVERED BY THIS
 VOLUME AND DESIGNATED FOR PUBLICATION

JOHN E. JENNINGS, CHIEF JUDGE:

Bennet <i>v.</i> State.....	154
Collins <i>v.</i> Treadwell	101
Lindsey <i>v.</i> State	266
Williams, Houston <i>v.</i> State	271

JOHN MAUZY PITTMAN, JUDGE:

Carroll Gen. Hosp. <i>v.</i> Green	104
Hartford Ins. Co. <i>v.</i> Brewer	1
Stafford <i>v.</i> Arkmo Lumber Co.	286

JAMES R. COOPER, JUDGE:

Brown <i>v.</i> State	44
Bryant <i>v.</i> Arkansas Pub. Serv. Comm'n	157
Christian <i>v.</i> State	193
Farmer <i>v.</i> State	66
Green <i>v.</i> Smith & Scott Logging	53
McNeely <i>v.</i> State	298
Nix <i>v.</i> State	302
Ramey <i>v.</i> State Farm Mut. Auto. Ins. Co.	307
White <i>v.</i> Director	197

JOHN B. ROBBINS, JUDGE:

Abernathy <i>v.</i> Weldon, Williams & Lick, Inc.	108
Adair <i>v.</i> Adair.....	9
Branch <i>v.</i> Carter.....	70
Estes <i>v.</i> Cedar Chemicals	311
Eveland <i>v.</i> State.....	393
Foxx <i>v.</i> American Transp.	115
Smith <i>v.</i> Gerber Prods.	57
Southern Hospitalities <i>v.</i> Britain.....	318

Southern Steel & Wire <i>v.</i> Kahler	376
Stone <i>v.</i> Steed	11

MELVIN MAYFIELD, JUDGE:

Boyd <i>v.</i> State	17
Brown <i>v.</i> Director	205
Carraro <i>v.</i> Director	210
Darling Store Fixtures <i>v.</i> McDonald	60
Lytle <i>v.</i> Arkansas Trucking Servs.	73
Southern Farm Bureau Cas. Ins. Co. <i>v.</i> Pettie	79

JUDITH ROGERS, JUDGE:

Atkins Nursing Home <i>v.</i> Gray	125
Cross <i>v.</i> Crawford County Memorial Hosp.	130
Farmland Ins. Co. <i>v.</i> Dubois	141
Fields <i>v.</i> Ginger	216
Hill <i>v.</i> State	380
Jones <i>v.</i> Ray	336
Maglothin <i>v.</i> State	146
Robertson <i>v.</i> State	230

JOHN F. STROUD, JR., JUDGE:

Jones <i>v.</i> State	150
Pilgrims Pride Corp. <i>v.</i> Caldarera	92
Vanzant <i>v.</i> Purvis	384
Weldon <i>v.</i> Pierce Bros. Constr.	344
Williams, Houston <i>v.</i> State	352

OLLY NEAL, JUDGE:

Milton <i>v.</i> State	96
------------------------------	----

WENDELL L. GRIFFEN, JUDGE:

Brunson <i>v.</i> State	248
Dugan <i>v.</i> Jerry Sweetser, Inc.	401
Easterling <i>v.</i> Weedman	22

Hanson <i>v</i> Amfuel	370
State Farm Mut. Auto. Ins. Co. <i>v</i> Lindsey	390

JACK HOLT, JR., SPECIAL JUDGE:

Bethel Baptist Church <i>v</i> Church Mut. Ins. Co.	262
--	-----

STANDARDS FOR PUBLICATION OF OPINIONS

Rule 5-2

Rules of the Arkansas Supreme Court and Court of Appeals

OPINIONS

(a) SUPREME COURT — SIGNED OPINIONS. All signed opinions of the Supreme Court shall be designated for publication.

(b) COURT OF APPEALS — OPINION FORM. Opinions of the Court of Appeals may be in conventional form or in memorandum form. They shall be filed with the Clerk. The opinions need not contain a detailed statement of the facts, but may set forth only such matters as may be necessary to an understandable discussion of the errors urged. In appeals from decisions of the Arkansas Board of Review in unemployment compensation cases, when the Court finds the decision appealed from is supported by substantial evidence, that there is an absence of fraud, no error of law appears in the record, and an opinion would have no precedential value, the order may be affirmed without opinion.

(c) COURT OF APPEALS — PUBLISHED OPINIONS. Opinions of the Court of Appeals which resolve novel or unusual questions will be released for publication when the opinions are announced and filed with the Clerk. The Court of Appeals may consider the question of whether to publish an opinion at its decision-making conference and at that time, if appropriate, make a tentative decision not to publish. Concurring and dissenting opinions will be published only if the majority opinion is published. All opinions that are not to be published shall be marked "Not Designated For Publication."

(d) COURT OF APPEALS — UNPUBLISHED OPINIONS. Opinions of the Court of Appeals not designated for publication shall not be published in the *Arkansas Reports* and shall not be cited, quoted or referred to by any court or in any argument, brief, or other materials presented to any court (except in continuing or related litigation upon an issue such as res judicata, collateral estop-

pel, or law of the case). Opinions not designated for publication shall be listed in the *Arkansas Reports* by case number, style, date, and disposition.

(e) COPIES OF ALL OPINIONS. In every case the Clerk will furnish, without charge, one typewritten copy of all of the Court's published or unpublished opinions in the case to counsel for every party on whose behalf a separate brief was filed. The charge for additional copies is fixed by statute.

OPINIONS NOT DESIGNATED FOR PUBLICATION

- Adams *v.* David Adams Olympic Pools, CA 95-719 (Griffen, J.), affirmed June 19, 1996.
- Adams *v.* Commercial Interiors, CA 95-483 (Pittman, J.), affirmed on appeal and cross-appeal June 19, 1996.
- Alexander *v.* State, CA CR 94-652 (Jennings, C.J.), affirmed June 19, 1996.
- Alvarez *v.* State, CA CR 95-821 (Mayfield, J.), affirmed May 29, 1996.
- American Western Life Ins. Co. *v.* Estate of Childers, CA 95-925 (Jennings, C.J.), reversed and dismissed August 28, 1996.
- Anderson *v.* State, CA CR 95-488 (Stroud, J.), affirmed May 29, 1996.
- Avett *v.* State, CA CR 95-1307 (Per Curiam), Appellee's Motion to Certify to the Supreme Court granted May 29, 1996.
- Banque Indosuez *v.* Rush Farms, CA 95-252 (Jennings, C.J.), affirmed June 5, 1996.
- Barclay *v.* Department of Human Servs., CA 95-778 (Mayfield, J.), affirmed June 12, 1996.
- Barnes *v.* State, CA CR 95-691 (Pittman, J.), affirmed June 19, 1996.
- Benton *v.* State, CA CR 95-1127 (Hays, S.J.), affirmed September 11, 1996.
- Bernard *v.* State, CA CR 95-953 (Griffen, J.), affirmed June 19, 1996.
- Beyer *v.* White, CA 95-845 (Griffen, J.), affirmed August 28, 1996.
- Big Mac Constr. Co. *v.* Young, CA 95-854 (Mayfield, J.), affirmed June 5, 1995.
- Bishop *v.* State, CA CR 95-613 (Griffen, J.), affirmed July 3, 1996.
- Bolin *v.* State, CA CR 95-1053 (Pittman, J.), affirmed June 26, 1996.
- Bolton *v.* State, CA CR 95-350 (Neal, J.), affirmed June 5, 1996.
- Bozeman *v.* State, CA CR 95-1089 (Rogers, J.), affirmed September 4, 1996.
- Brooks *v.* State, CA CR 94-1225 (Per Curiam), Appellant's Motion to Allow Additional Counsel for Representation granted July 3, 1996.
- Brooks *v.* State, CA CR 94-1225 (Per Curiam) Appellant's Motion to File Supplemental Brief granted July 3, 1996.
-

- Brown *v.* State, CA CR 95-1015 (Griffen, J.) affirmed June 26, 1996.
- Bunton *v.* State, CA CR 95-735 (Pittman, J.), affirmed June 26, 1996.
- Burlington Indus. *v.* Lee, CA 95-1158 (Robbins, J.), affirmed September 11, 1996.
- Campbell *v.* State Farm Mut. Auto. Ins. Co., CA 95-1000 (Jennings, C.J.), affirmed August 28, 1996.
- Carpenter *v.* Hilton, CA 95-882 (Jennings, C.J.), affirmed July 3, 1996.
- Coleman *v.* State, CA 95-210 (Rogers, J.), affirmed June 12, 1996. Rehearing denied August 14, 1996.
- Collins *v.* Earle Indus., CA 95-921 (Neal, J.), affirmed June 5, 1996.
- Colvin *v.* State, CA CR 95-694 (Pittman, J.), dismissed June 26, 1996.
- Comer *v.* Concord Boat Corp., CA 95-1132 (Griffen, J.), affirmed September 4, 1996.
- Corn Ins. Agency, Inc. *v.* North American Baptist Loan Ass'n, Inc., CA 95-83 (Mayfield, J.), reversed and remanded September 11, 1996.
- Cotton *v.* State, CA CR 95-570 (Stroud, J.), affirmed May 29, 1996.
- Cox *v.* Ballet Arkansas, Inc., CA 95-995 (Mayfield, J.), affirmed August 28, 1996.
- Cox *v.* State, CA CR 95-1061 (Robbins, J.), affirmed September 4, 1996.
- Dacus *v.* State, CA CR 95-625 (Jennings, C.J.), affirmed May 29, 1996.
- Dart *v.* State, CA CR 95-1025 (Pittman, J.), affirmed June 19, 1996.
- Davis *v.* Adcock, CA 95-433 (Stroud, J.), affirmed May 29, 1996.
- Day *v.* Forrester, CA 95-1306 (Rogers, J.), affirmed May 29, 1996.
- Dickerson *v.* State, CA CR 95-258 (Pittman, J.), affirmed August 28, 1996.
- Drechsler *v.* Director, E 94-255 (Jennings, C.J.), affirmed June 19, 1996.
- Duff *v.* Estate of Duff, CA 95-110 (Cooper, J.), affirmed July 3, 1996.
- Dulaney *v.* State, CA CR 95-344 (Griffen, J.), affirmed July 3, 1996.

- Eason *v* State, CA CR 95-707 (Cracraft, S.J.), affirmed September 4, 1996. Rehearing denied October 9, 1996.
- Ecton *v* Director, E 94-280 (Robbins, J.), affirmed June 19, 1996.
- Electrocon, Inc. *v* Hampton, CA 95-1063 (Neal, J.), affirmed August 21, 1996.
- Feltman *v* Roberts, CA 95-152 (Pittman, J.), affirmed June 12, 1996.
- Fidelity & Casualty Ins. Co. *v* Sprague, CA 95-851 (Cooper, J.), dismissed August 21, 1996.
- Footte *v* State, CA CR 95-1067 (Stroud, J.), affirmed August 21, 1996.
- Fout *v* Director, E 95-93 (Stroud, J.), affirmed June 26, 1996.
- Franklin *v* State, CA CR 95-1123 (Stroud, J.), affirmed September 4, 1996.
- Garcia *v* State, CA CR 95-955 (Rogers, J.), affirmed September 11, 1996.
- Gartrell *v* Director, E 95-54 (Rogers, J.) affirmed June 26, 1996.
- Gaston *v* Office of Child Support Enforcement, CA 95-396 (Griffen, J.), affirmed July 3, 1996.
- Garrett *v* Garrett, CA 95-886 (Hays, S.J.), affirmed September 11, 1996.
- General Elec. Railcar Repair *v* Wooten, CA 95-1083 (Neal, J.), affirmed September 4, 1996.
- General Ins. Co. of America *v* Flanco Leasing, Inc., CA 95-775 (Robbins, J.), reversed and remanded August 28, 1996.
- Georgia-Pacific Corp. *v* Toombs, CA 95-720 (Stroud, J.), affirmed September 11, 1996. Rehearing denied October 16, 1996.
- Gore *v* State, CA CR 95-615 (Neal, J.), affirmed May 29, 1996.
- Grant *v* University of Ark. for Medical Sciences, CA 95-655 (Griffen, J.) affirmed June 26, 1996.
- Green *v* Coca-Cola Bottling Co., CA 95-1117 (Griffen, J.), reversed and remanded August 21, 1996. Rehearing denied October 2, 1996.
- Hallsell *v* Levi Strauss & Co., CA 95-731 (Cooper, J.), affirmed in part, reversed in part, and remanded June 26, 1996.
- Hardcastle Law Firm, P.A. *v* Director, E 94-212 (Griffen, J.), affirmed June 19, 1996.
- Henry *v* State, CA CR 95-770 (Robbins, J.), affirmed June 19, 1996.
- Hiwasse Mfg. Co. *v* Crisco, CA 95-914 (Jennings, C.J.), affirmed

- June 5, 1996.
- Huff *v.* State, CA CR 95-959 (Stroud, J.), affirmed August 28, 1996.
- Hulsey *v.* State, CA CR 95-589 (Rogers, J.), affirmed July 3, 1996.
- Humphrey *v.* State, CA CR 95-681 (Mayfield, J.), affirmed May 29, 1996.
- Hutcherson *v.* Arkansas Dep't of Human Servs., CA 95-617 (Pittman, J.), affirmed June 26, 1996.
- Jackson, Clarence James *v.* State, CA CR 95-944 (Neal, J.), affirmed June 5, 1996.
- Jackson, Bruce A. *v.* State, CA CR 95-729 (Mayfield, J.), affirmed July 3, 1996.
- Jefferson Regional Medical Ctr. *v.* Painter, CA 95-614 (Griffen, J.), affirmed June 26, 1996.
- Jeffus *v.* Garner, CA 95-881 (Cracraft, S.J.), affirmed September 4, 1996.
- Jim Walter Homes *v.* Beard, CA 95-926 (Jennings, C.J.), affirmed June 12, 1996.
- Johnson *v.* Johnson Truck & Trailer, CA 95-1016 (Pittman, J.), affirmed August 28, 1996.
- Johnson *v.* State, CA CR 95-1074 (Stroud, J.), affirmed August 28, 1996.
- Johnston *v.* Arkansas Dep't of Human Servs., CA 95-1157 (Cooper, J.), affirmed June 26, 1996.
- Jones *v.* Robinson, CA 95-603 (Jennings, C.J.), affirmed in part; reversed in part July 3, 1996. Rehearing denied August 14, 1996.
- Jones, Roland *v.* State, CA CR 95-929 (Robbins, J.), affirmed May 29, 1996.
- Jones, Broderick *v.* State, CA CR 95-866 (Mayfield, J.), affirmed June 5, 1996.
- Jones, Mark Edward *v.* State, CA CR 95-385 (Mayfield, J.), affirmed June 5, 1996.
- Key *v.* State, CA CR 95-748 (Cooper, J.), affirmed July 3, 1996.
- Kirkwood *v.* State Farm Mut. Auto. Ins. Co., CA 95-359 (Mayfield, J.), affirmed May 29, 1996.
- King *v.* State, CA CR 95-378 (Stroud, J.), reversed and remanded June 5, 1996.
- Kottke *v.* State, CA 95-554 (Stroud, J.), affirmed September 11, 1996.

- Lawson *v* State, CA CR 95-993 (Neal, J.), affirmed June 26, 1996.
- Lewis *v* Little Rock Sch. Dist., CA 95-910 (Stroud, J.), affirmed August 28, 1996.
- Lindley *v* Director, E 94-242 (Pittman, J.), affirmed June 19, 1996.
- Lowery *v* State, CA CR 95-1236 (Per Curiam), Order to File Brief issued June 5, 1996.
- Madewell *v* State, CA CR 95-533 (Pittman, J.), reversed and remanded June 19, 1996.
- McBride *v* Strain, CA 95-118 (Mayfield, J.), affirmed in part and remanded in part on appeal; affirmed on cross-appeal July 3, 1996. Rehearing denied August 14, 1996.
- McClellan *v* State, CA CR 95-249 (Griffen, J.) affirmed June 26, 1996.
- McCray *v* State, CA CR 94-1436 (Griffen, J.), affirmed May 29, 1996.
- Middleton *v* Harmon, CA 95-692 (Robbins, J.), affirmed September 11, 1996.
- Mistic *v* Director, E 95-131 (Neal, J.), affirmed June 19, 1996.
- Mitchell *v* State, CA CR 94-1401 (Robbins, J.), affirmed September 11, 1996.
- Montgomery *v* Norman's Florist, CA 95-718 (Pittman, J.), affirmed June 5, 1996.
- Morgan *v* Director, E 94-252 (Cooper, J.), affirmed June 26, 1996.
- Moseby *v* State, CA CR 95-1046 (Per Curiam), Order to Comply with Rule 4-3(j) issued August 28, 1996.
- Murry *v* Ward, CA 95-827 (Cracraft, S.J.), affirmed September 4, 1996.
- Myers *v* Mooney, CA 95-932 (Stroud, J.), reversed and remanded September 4, 1996.
- Myers *v* Myers, CA 95-772 (Pittman, J.), affirmed September 11, 1996.
- Nelson *v* State, CA CR 95-922 (Mayfield, J.), affirmed September 11, 1996.
- Oliver *v* Grissom, CA 95-1099 (Stroud, J.), affirmed June 19, 1996.
- Oxford *v* State, CA CR 95-888 (Rogers, J.), affirmed June 12, 1996.
- Pacello *v* State, CA CR 95-343 (Jennings, C.J.), affirmed July 3, 1996.
- Parker *v* International Paper Co., CA 95-723 (Rogers, J.), affirmed September 11, 1996.

- Peters *v.* State, CA CR 95-943 (Stroud, J.), affirmed June 26, 1996.
- Poff *v.* Estate of Poff, CA 95-1303 (Per Curiam), Appellant's Motion to Stay Brief Time granted June 12, 1996.
- Poff *v.* Estate of Poff, CA 95-1302 (Per Curiam), Appellant's Motion to Stay Brief Time granted June 12, 1996.
- Pouncy *v.* Mid-South Seed, CA 95-849 (Stroud, J.), affirmed June 19, 1996.
- Powell *v.* Georgia-Pacific Corp., CA 95-667 (Jennings, C.J.), affirmed September 4, 1996.
- Poynor *v.* Adams, CA 95-782 (Neal, J.), affirmed August 28, 1996.
- Priest *v.* Priest, CA 95-470 (Neal, J.), affirmed May 29, 1996.
- Ralph *v.* State, CA CR 96-207 (Cooper, J.), reversed and remanded July 3, 1996.
- Rankin *v.* State, CA CR 94-278 (Per Curiam), Appellee's Motion to File a Belated Brief granted July 3, 1996.
- Rawls *v.* Farm Bureau Mut. Ins. Co., CA 95-844 (Neal, J.), affirmed September 4, 1996.
- Reavis *v.* State, CA CR 95-1173 (Jennings, C.J.), affirmed September 11, 1996.
- Reed *v.* Con-Agra Frozen Foods, CA 95-507 (Cooper, J.), affirmed June 12, 1996.
- Richmond *v.* State, CA CR 95-927 (Mayfield, J.), affirmed July 3, 1996.
- Rivera *v.* State, CA CR 95-683 (Pittman, J.), affirmed June 12, 1996.
- Roberts *v.* Baptist Medical Ctr., CA 95-781 (Jennings, C.J.), affirmed June 26, 1996.
- Robinson *v.* O'Bryan, CA 95-156 (Neal, J.), affirmed June 19, 1996.
- Rodio-Nicholson Joint Venture *v.* Koonce, CA 95-1001 (Neal, J.), affirmed August 28, 1996.
- Rogers *v.* Darling Store Fixtures, CA 95-865 (Cooper, J.), reversed and remanded July 3, 1996.
- Rutledge *v.* Parson, CA 95-306 (Neal, J.), affirmed September 4, 1996.
- Scales *v.* State, CA CR 95-399 (Robbins, J.), affirmed June 26, 1996.
- Schalksi *v.* State, CA CR 95-538 (Robbins, J.), affirmed June 5, 1996.
- Schickel Enters. *v.* Consolidated Credit Corp., CA 95-225 (Rob-

- bins, J.), affirmed in part; reversed and remanded in part, September 4, 1996.
- Scott *v* State, CA CR 95-810 (Griffen, J.), affirmed August 28, 1996. Rehearing denied September 25, 1996.
- Sebastian *v* State, CA CR 95-592 (Stroud, J.), affirmed June 26, 1996.
- Sellars *v* Fruit of the Loom, CA 94-1211 (Per Curiam), Petition for Rehearing denied June 19, 1996.
- Sevier County *v* Reel, CA 95-1106 (Cracraft, S.J.), affirmed August 28, 1996. Rehearing denied September 25, 1996.
- Shamlin *v* Aiken, CA 95-341 (Rogers, J.), affirmed September 11, 1996.
- Shaw *v* State, CA CR 95-654 (Rogers, J.), affirmed May 29, 1996.
- Shepard *v* State, CA CR 95-606 (Neal, J.), affirmed June 26, 1996.
- Simpson *v* State, CA CR 94-883 (Robbins, J.), affirmed June 19, 1996.
- Skil Corp. *v* Cornelison, CA 95-898 (Rogers, J.), affirmed August 28, 1996.
- Smith *v* Brown Shoe Co., CA 95-1060 (Jennings, C.J.), affirmed August 21, 1996.
- Smith *v* State, CA CR 95-823 (Robbins, J.), affirmed June 5, 1996.
- Southern Farm Bureau Cas. Ins. Co. *v* Pettie, CA 95-324 (Per Curiam), Opinion Withdrawn, New Opinion to be Substituted June 19, 1996.
- Southern Steel & Wire *v* Hawkins, CA 95-1260 (Neal, J.), affirmed September 11, 1996.
- Stalnaker *v* State, CA CR 95-818 (Pittman, J.), affirmed July 3, 1996.
- Stephens *v* Director, E 95-79 (Per Curiam), Appellant's Pro Se Motion to Direct Record be Filed and Appellant's Petition for Writ of Certiorari June 19, 1996.
- Stevens *v* State, CA CR 95-568 (Rogers, J.), affirmed August 28, 1996.
- Sullins *v* State, CA CR 95-404 (Griffen, J.), affirmed June 26, 1996.
- Taylor *v* Producers Rice Mill, CA 95-712 (Jennings, C.J.), affirmed June 12, 1996.
- Taylor, Anthony Lynn *v* State, CA CR 95-597 (Jennings, C.J.), affirmed July 3, 1996.
- Taylor, Charles *v* State, CA CR 95-936 (Rogers, J.) affirmed June

- 26, 1996.
- Taylor, Todd *v.* State, CA CR 95-1006 (Jennings, C.J.), affirmed September 4, 1996.
- Tucker, Troy Allen *v.* State, CA CR 94-156 (Cooper, J.), affirmed May 29, 1996.
- Tucker, Vonsuk Yan *v.* State, CA CR 94-849 (Rogers, J.), affirmed June 5, 1996.
- Vastine *v.* First Nat'l Bank & Trust Co., CA 95-1082 (Per Curiam), dismissed July 3, 1996. Rehearing denied August 28, 1996.
- Washington Regional Medical Ctr. *v.* Noone, CA 95-855 (Jennings, C.J.), affirmed June 26, 1996.
- Waters *v.* Western Grove Sch. Dist., CA 95-656 (Stroud, J.), affirmed July 3, 1996.
- Weaver *v.* State, CA CR 95-1091 (Neal, J.), affirmed September 11, 1996.
- Webster *v.* State, CA CR 95-373 (Cooper, J.), affirmed June 5, 1996.
- Westark Community College *v.* Hamilton, CA 95-751 (Cooper, J.), affirmed June 19, 1996.
- White *v.* Welsh, CA 95-863 (Per Curiam), dismissed August 21, 1996.
- Whitlock *v.* Whitlock, CA 95-1195 (Griffen, J.), affirmed June 26, 1996.
- Williams *v.* State, CA CR 95-773 (Jennings, C.J.), affirmed June 12, 1996.
- Wyatt *v.* Wyatt, CA 95-535 (Cooper, J.), affirmed August 21, 1996.
- Young *v.* State, CA CR 95-649 (Pittman, J.), affirmed June 26, 1996.

CASES AFFIRMED BY THE ARKANSAS
COURT OF APPEALS WITHOUT WRITTEN
OPINION PURSUANT TO RULE 5-2(b),
RULES OF THE ARKANSAS SUPREME COURT
AND COURT OF APPEALS

- Ayre *ν* Director of Labor, E 95-58, June 5, 1996.
Baker *ν* Director of Labor, E 95-171, September 11, 1996.
Bell *ν* Director of Labor, E 95-169, September 11, 1996.
Betts *ν* Director of Labor, E 95-150, September 11, 1996.
BJ's Fast Cash Loans *ν* Director of Labor, E 95-55, June 5, 1996.
Bookout *ν* Director of Labor, E 95-50, May 29, 1996.
Bridwell *ν* Director of Labor, E 95-129, September 11, 1996.
Brown *ν* Director of Labor E 95-86, August 28, 1996.
Buckwater *ν* Director of Labor E 95-84, August 28, 1996.
Crockett *ν* Director of Labor, E 95-144, September 11, 1996.
Daniels *ν* Director of Labor, E 95-147, September 4, 1996.
Davis *ν* Director of Labor, E 95-68, June 12, 1996.
Dixon *ν* Director of Labor, E 95-71, June 5, 1996.
Doles *ν* Director of Labor, E 95-141, September 4, 1996.
Durham *ν* Director of Labor, E 95-130, September 11, 1996.
Enos *ν* Director of Labor, E 95-160, September 11, 1996.
Evans *ν* Director of Labor E 95-76, August 28, 1996.
Evens *ν* Director of Labor, E 95-49, May 29, 1996.
Foshee *ν* Director of Labor, E 95-109, September 11, 1996.
Fox *ν* Director of Labor, E 95-033, September 11, 1996.
Frisby *ν* Director of Labor, E 95-158, September 11, 1996.
Furnish *ν* Director of Labor E 95-14, August 28, 1996.
Hale *ν* Director of Labor, E 95-163, September 11, 1996.
Hampton *ν* Director of Labor E 95-75, August 28, 1996.
Henry *ν* Director of Labor, E 95-089, September 4, 1996.
Holt *ν* Director of Labor E 95-69, August 28, 1996.
Hudson *ν* Director of Labor, E 95-67, June 12, 1996.
Jerry *ν* Director of Labor E 95-83, August 28, 1996.
King, Bryan *ν* Director of Labor, E 95-145, September 4, 1996.
King, Pamela *ν* Director of Labor, E 95-65, June 5, 1996.
Kirk *ν* Director of Labor, E 95-47, May 29, 1996.
Krell *ν* Director of Labor E 95-72, August 28, 1996.
Lawler *ν* Director of Labor E 95-45, August 28, 1996.
Lindsey *ν* Director of Labor, E 95-66, June 5, 1996.
Livingston *ν* Director of Labor, E 95-149, September 11, 1996.

Mackin *v.* Director of Labor, E 95-46, May 29, 1996.
Monk *v.* Director of Labor E 95-92, August 28, 1996.
Nesbitt *v.* Director of Labor, E 95-166, September 11, 1996.
President Baking Co., Inc. *v.* Director of Labor, E 95-56, June 5,
1996.
R&G Sloane *v.* Director of Labor, E 95-156, September 11, 1996.
Rainey *v.* Director of Labor, E 95-162, September 11, 1996.
Rettig *v.* Director of Labor, E 95-60, June 12, 1996.
Richardson, David W. *v.* Director of Labor, E 95-118, September 4,
1996.
Richardson, Bobby J. *v.* Director of Labor, E 95-28, June 12, 1996.
Rugg *v.* Director of Labor E 95-81, August 28, 1996.
Sheffler *v.* Director of Labor, E 95-088, September 4, 1996.
Small *v.* Director of Labor E 95-59, August 28, 1996.
Tanner *v.* Director of Labor, E 95-32, June 12, 1996.
Thomas *v.* Director of Labor, E 95-31, May 29, 1996.
Valorie's *v.* Director of Labor, E 95-61, June 12, 1996.
Wagner *v.* Director of Labor E 95-82, August 28, 1996.
Watts *v.* Director of Labor, E 95-51, May 29, 1996.
Wittman *v.* Director of Labor E 95-85, August 28, 1996.
Young *v.* Director of Labor E 95-77, August 28, 1996.



Alphabetical
Headnote
Index

 HEADNOTE INDEX

ADMINISTRATIVE LAW & PROCEDURE:

Scope of review. *Bryant v. Arkansas Pub. Serv. Comm'n*, 157.

APPEAL & ERROR:

- Appellant failed to bring up record sufficient to demonstrate error, summary judgment affirmed. *Hartford Ins. Co. v. Brewer*, 1.
- Chancery cases tried *de novo* on record, when reversed. *Adair v. Adair*, 9.
- Review of chancery cases *de novo*, appellate court defers to superior position of chancellor, especially in custody cases. *Stone v. Steed*, 11.
- No authority cited nor convincing argument made, appellate court will not consider point. *Easterling v. Weedman*, 22.
- Petition for writ of error *coram nobis* previously reviewed and rejected. *Brown v. State*, 44.
- Arguments raised for first time on appeal not considered. *Farmer v. State*, 66.
- Failure to proffer testimony at trial precludes review on appeal. *Abernathy v. Weldon, Williams, & Lick, Inc.*, 108.
- Appellant failed to demonstrate prejudice, error no longer presumed prejudicial. *Id.*
- Trial court never made finding that appellant ratified forgery by subsequent actions, argument rejected. *Id.*
- Issue not argued below not addressed on appeal. *Bryant v. Arkansas Pub. Serv. Comm'n*, 157.
- Issue of illegal sentence not considered on appeal unless raised by appellant. *Christian v. State*, 191.
- Particular objection raised on appeal not raised below, objection not considered on appeal. *Id.*
- Review of chancery cases, when reversed. *Fields v. Ginger*, 216.
- Issue not raised at trial not reached on appeal. *Id.*
- Review of denial of motion to suppress. *Brunson v. State*, 248.
- Trial court's order was appealable. *Bethel Baptist Church v. Church Mut. Ins. Co.*, 262.
- Review of directed-verdict motion. *Williams v. State*, 271.
- Argument on appeal not raised below, appellate court does not address arguments made for first time on appeal. *McNeely v. State*, 298.
- Arguments not raised at trial will not be addressed for first time on appeal, parties may not change grounds for an objection on appeal. *Nix v. State*, 302.
- Assignments of error not supported by convincing argument are not considered on appeal. *Id.*
- Chancellor's order not clear on who was to bear expense of termite contract, issue remanded to chancellor for reconsideration. *Jones v. Ray*, 336.
- Appellant failed to make sufficient proffer of excluded evidence, issue not reached on appeal. *Williams v. State*, 352.
- Issues may not be raised on appeal that have not be raised below. *Hanson v. Amfuehl*, 370.
- Appellant should have been allowed to question detective concerning false statement and filing of false police report, reversed and remanded. *Hill v. State*, 380.
- Law of case, earlier opinion controlling. *Eveland v. State*, 393.
- Argument cannot be changed on appeal, appellant bound by arguments made at trial level. *Ferrel v. State*, 456.

ARREST:

- Pretextual arrests, test for whether arrest is pretextual. *Brown v. State*, 44.
- Pretextual arrest not found, valid objective reason existed for the stop and arrest. *Id.*
-

ATTORNEY & CLIENT:

- Attorney employed to represent State in paternity and child-support matters does not represent assignee of interest. *Vanzant v. Purvis*, 384.
- Conflict of interest, issue is whether counsel's performance is adversely affected. *Eveland v. State*, 393.
- Conflict of interest, defendant must have opportunity to show that potential conflicts imperil right to fair trial. *Id.*
- Conflict of interest, defense counsel is in best position to determine when conflict exists or may develop. *Id.*
- Conflict of interest, trial court abused its discretion in denying motions for separate counsel. *Id.*

CIVIL PROCEDURE:

- Trial court's use of ARCP Rule 12(b)(6) language pointed to dismissal. *Bethel Baptist Church v. Church Mut. Ins. Co.*, 262.
- Improper for court to look beyond complaint to dismiss. *Id.*
- Issues tried by express or implied consent of parties are treated as if they had been pled, issue of award of damages properly tried by parties' implied consent. *Jones v. Ray*, 336.
- Service upon attorney. *Vanzant v. Purvis*, 384.
- Service, trial court erred in finding that attorney represented appellant, service of counterpetition on attorney not valid. *Id.*

CONSTITUTIONAL LAW:

- Double jeopardy, appellant's conviction on conspiracy charge did not violate principle of double jeopardy. *Williams v. State*, 271.
- Double jeopardy, when right may be invoked to bar second trial, granting motions for separate trials would not have prevented appellants from being tried. *Eveland v. State*, 393.

CONTRACTS:

- Interpretation of, intent of parties to be determined from whole context of agreement. *Hartford Ins. Co. v. Brewer*, 1.
- Duty owed, question of fact where contract ambiguous regarding intent. *Easterling v. Weedman*, 22.
- Independent contractor, negligence in performing work, liability of employer. *Id.*
- Independent contractor, duty to supervise, question of fact. *Id.*
- Independent contractor, provisions in appellant's agreement with insurance company were ambiguous, summary judgment was inappropriate. *Id.*

COURTS:

- Trial court erred in relying upon Ark. Code Ann. § 5-4-303(f) where appellant was never ordered to pay restitution or reparations. *Jones v. State*, 150.
- Trial court's order extending probation was invalid attempt to modify sentence. *Id.*
- Trial court cannot modify valid sentence put into execution, trial court's revocation of probation was invalid. *Id.*
- Jurisdiction, criminal case, when proof by State is required. *Lindsey v. State*, 266.

CRIMINAL LAW:

- Theft of car was continuing offense until appellant was apprehended, evidence was sufficient to convict appellant of aggravated robbery. *Boyd v. State*, 17.
- Appellant advised of his *Miranda* rights, knowledge of all crimes for which appellant being investigated not relevant to valid waiver of rights. *Brown v. State*, 44.
- Review of trial court's denial of motion to suppress confession, factors on review. *Milton v. State*, 96.
- Police-initiated contact prohibited after defendant asks to deal with police through counsel, any subsequent waiver of rights invalid. *Id.*
- Waiver of rights, effect of appointment of counsel. *Id.*

Appellant and authorities aware counsel had been appointed, appellant's conviction reversed. *Id.*

Theft of property, determination of market value of property. *Christian v. State*, 191.
Jurisdiction, any state in which essential part of crime was committed may take jurisdiction. *Lindsey v. State*, 266.

Accomplices, whether witness is accomplice is mixed question of law and fact. *Williams v. State*, 271.

Accomplices, drawing of inferences is for trier of fact. *Id.*

Accomplices, trial court did not err in submitting question of accomplice status to jury. *Id.*

Sentence enhancement, no fundamental unfairness in addressing habitual conduct through use of enhancement. *Id.*

Testimony given upon which trial court based restitution amount for theft of property, only reasonable monthly payments required. *Nix v. State*, 302.

CRIMINAL PROCEDURE:

Appellant lawfully arrested, rule inapplicable. *Brown v. State*, 44.

Discovery, evidence favorable to defendant must be disclosed by prosecutor, continuing duty. *Farmer v. State*, 66.

Discovery, State's failure to provide information, appellant's burden, prejudice to appellant is key to reversal. *Id.*

Discovery, appellant prejudiced by State's failure to disclose information regarding police officer's resignation, trial court abused discretion in denying new trial, case reversed and remanded. *Id.*

Trial scheduled after speedy-trial period expired, burden of proof on State to show delay legally justified. *Bennett v. State*, 154.

Speedy-trial rule, delays caused by defendant's motion to transfer not excludable. *Id.*

Speedy-trial period clearly exceeded, circuit court judgment reversed and dismissed. *Id.*

Reasonable suspicion needed for investigatory stop, reasonable suspicion defined. *Roberson v. State*, 230.

Level of information necessary for legal investigatory stop, officer need not know that a crime has been committed. *Id.*

Investigatory stop, restraining police action until after probable cause is obtained a hindrance to investigation. *Id.*

Investigatory stop proper, trial court's denial of appellant's motion to suppress not clearly against preponderance of evidence. *Id.*

No evidence indicating how officer formed reasonable suspicion that appellant concealed contraband, "reasonable suspicion" defined. *Brunson v. State*, 248.

"Probable cause" defined. *Id.*

Warrantless arrest discussed, no evidence that officer saw appellant commit any violation of law. *Id.*

Joinder of offenses for trial, when proper. *Williams v. State*, 352.

Trial court did not abuse its discretion in refusing to sever offenses, acts were sufficiently similar to constitute single scheme or plan. *Id.*

Severance, prosecutor's options. *Eveland v. State*, 393.

Severance, factors favoring. *Id.*

Severance, decided on case-by-case basis. *Id.*

Decision denying motion not disturbed unless discretion is abused. *Id.*

Trial court abused its discretion in failing to grant. *Id.*

DAMAGES:

Amount of damages awarded by chancellor not clearly erroneous, chancellor's ruling not disturbed. *Jones v. Ray*, 336.

DRUGS & NARCOTICS:

Proof needed for conviction for possession of controlled substance, when constructive possession may be implied. *Williams v. State*, 352.

Possession of controlled substances, two elements of proof necessary when conviction is based on joint occupancy of premises where contraband is found. *Id.*
Sufficient additional evidence linked appellant to drugs found at her home, substantial evidence supported appellant's conviction. *Id.*

EASEMENTS:

Assertion of easement by prescription, burden of proof. *Fields v. Ginger*, 216.
Prescriptive rights, exception to general rule. *Id.*
Prescriptive easements, use sufficient to establish adverse claim. *Id.*
Determination whether use of roadway is adverse or permissive is question of fact, chancellor's decision not clearly against preponderance of evidence. *Id.*

EMPLOYMENT SECURITY:

Employer's burden to prove employee discharged for misconduct, misconduct defined. *Southern Steel & Wire v. Kahler*, 376.

ESTOPPEL:

Elements of. *Southern Hospitalities v. Britain*, 318.

EVIDENCE:

Appellee offered no evidence she suffered injury as result of bankruptcy petition's dismissal, award clearly erroneous. *Adair v. Adair*, 9.
Misdemeanor convictions used to show moral character of parent, testimony concerning moral character relevant to determination of best interest of child. *Stone v. Steed*, 11.
Sufficiency of in criminal case, substantial evidence discussed. *Boyd v. State*, 17.
Hearsay defined. *Easterling v. Weedman*, 22.
Statements that are not hearsay, admission by party-opponent. *Id.*
Testimony by appellant was not hearsay and was improperly excluded, appellee was party against whose interests decedent's statement was directed. *Id.*
Hearsay exceptions, then existing mental, emotional, or physical condition. *Id.*
Testimony by decedent's sister-in-law and bank officer was admissible to show decedent's then existing intent and motive. *Id.*
Exclusion of relevant evidence, discretion of trial court in determining relevance and gauging probative value. *Id.*
Abuse of trial court's discretion to exclude appellant's testimony concerning decedent's statements. *Id.*
Probative-value-versus-prejudice test. *Id.*
Hearsay, authentic documents offered for truth of matter asserted are hearsay and inadmissible unless covered by exception. *Id.*
Hearsay exceptions, public records and reports, rationale, private parties may not introduce hearsay about private conduct by filing private report at courthouse. *Id.*
Hearsay, public-records-and-reports exception not met, probate inventory was improperly admitted. *Id.*
Sufficiency of, substantial evidence defined. *Brown v. State*, 44.
Intent seldom capable of proof by direct evidence, presumption exists that a person intends the natural and probable consequences of his acts. *Id.*
Evidence sufficient for jury to infer appellant intended to take victim away and not return her, appellant's conviction for permanent detention or restraint supported by sufficient evidence. *Id.*
Relevant evidence defined, when trial court's discretion in determining relevance will be reversed. *Id.*
Appellant's statement relevant and probative of intent, no abuse of discretion found. *Id.*
Trial court's finding that signature was appellant's was not clearly against preponderance of evidence. *Abernathy v. Weldon, Williams, & Lick, Inc.*, 108.
No error in striking portion of witness's testimony dealing with excluded evidence. *Bryant v. Arkansas Pub. Serv. Comm'n*, 157.
Motion for directed verdict is a challenge to sufficiency of evidence, factors on review. *Christian v. State*, 191.

Witness testified as to value of stolen property, evidence found sufficient to support conviction. *Id.*

Admission of evidence under A.R.E 404(b), admission or rejection left to trial court. *Id.*

Evidence of crime other than the one charged, when admitted. *Id.*

Evidence admitted to show unique method of operation, no error in admitting. *Id.*

Probative value of evidence not outweighed by prejudice, appellant failed to request cautionary instruction at trial. *Id.*

Proffer, why required. *Lindsey v. State*, 266.

Proffer, substance of evidence was apparent, proffer was adequate. *Id.*

Rape Shield Statute has no application to victim's prior inconsistent statement, witness's testimony that victim recanted should have been admitted, case reversed and remanded. *Id.*

Test for determining sufficiency of. *Williams v. State*, 271.

Substantial evidence presented at trial to support jury's verdict, trial court did not err in denying directed-verdict motion. *Id.*

Purpose of restitution to make victim whole as possible, evidence sufficient to support trial court's order of restitution. *Nix v. State*, 302.

Proffer not necessary when substance of offer is apparent. *Hill v. State*, 380.

Character evidence, specific instances. *Id.*

Character evidence, threefold test for admissibility. *Id.*

Character evidence, intended questioning was being pursued in good faith, instances of misconduct related to witness's veracity and were probative. *Id.*

Substantial evidence existed, state sustained its burden of proof. *Ferrell v. State*, 455.

Expert's opinion may be made by reliance on outside data, trial court's ruling on hearsay question not abuse of discretion. *Ferrell v. State*, 457.

FAMILY LAW:

Child-support arrearages, limitations period. *Branch v. Carter*, 70.

Child-support arrearages, act enlarging limitations period retroactively applied to delinquent payments. *Id.*

Child-support arrearages, case reversed and remanded for award of support for additional period of time. *Id.*

INSURANCE:

Uninsured-motorist coverage, intention of policy requirements for recovery. *Southern Farm Bureau Cas. Ins. Co. v. Pettie*, 79.

Uninsured-motorist coverage, payment under uninsured motorist coverage cannot be reduced by amount of any workers' compensation paid to injured party. *Id.*

Accidental death benefits should not be reduced because insured's beneficiaries also receive workman's compensation, such a clause denying benefits is against public policy. *Id.*

Exclusive remedy provisions of workers' compensation law did not bar appellee's recovery, public policy required coverage here. *Id.*

Policyholder may recover against insurer even though statute of limitations has run, appellant's argument without merit. *Id.*

Whether use of an automobile is a regular use under policy terms calls for interpretation of policy, insurance policies are construed against drafter. *Id.*

Unclear policy provision presented question of fact for trial court, circuit court's determination not in error. *Id.*

Statute used by appellant inapplicable, Ark. Code Ann. 27-19-713 (f)(1)(Repl. 1994) had no applicability to insurance policy. *Ramey v. State Farm Mut. Automobile Ins. Co.*, 307.

Insured required under policy terms to notify insurer when sued as result of auto accident, insurer must have knowledge of all material facts in order to waive provision. *Id.*

Underinsured and uninsured motorist coverage, underinsured coverage does not apply when insured is struck by uninsured motorist. *State Farm Mut. Auto. Ins. Co. v Lindsey*, 390.

Underinsured and uninsured motorist coverage, distinct concepts. *Id.*

JUDGMENT:

Summary judgment, when granted. *Hartford Ins. Co. v Brewer*, 1.

Summary judgment, review on appeal, burden of proof. *Easterling v Weedman*, 22.

Trial court's finding may have been based on erroneous grounds, correct decision will not be disturbed even though based on wrong grounds. *Southern Farm Bureau Cas. Ins. Co. v Pettie*, 79.

Summary judgment improperly granted to one appellee, this point reversed and remanded. *Ramey v. State Farm Mut. Automobile Ins. Co.*, 307.

Proper service required or judgment void, order changing custody of parties' children to appellee was void. *Vanzani v Purvis*, 384.

Summary judgment in favor of appellee reversed, matter remanded for entry of summary judgment in favor of appellant. *State Farm Mut. Auto. Ins. Co. v Lindsey*, 390.

JURY:

Extent of voir dire left to sound discretion of trial judge, issue moot. *Ferrel v State*, 455.

Loss of peremptory challenges, not reviewable. *Ferrel v State, Id.*

Trial court refused to strike juror for cause, no abuse of discretion found. *Ferrell v State, Id.*

LIMITATION OF ACTIONS:

Legislature has power to amend statutes of limitations affecting causes of action not yet barred. *Branch v Carter*, 70.

MOTIONS:

Motion for directed verdict a challenge to evidence sufficiency, sufficiency of evidence challenge reviewed first. *Brown v State*, 44.

Denial of motion to suppress, factors on review. *Id.*

Motion to suppress, factors to be considered. *Brunson v State*, 248.

Motion to suppress, evidence seized because of illegal search should have been suppressed. *Id.*

Motion to suppress, trial court's denial was clearly erroneous, reversed and remanded. *Id.*

Motion to dismiss, trial court erred in granting. *Bethel Baptist Church v Church Mut. Ins. Co.*, 262.

Severance, motion to sever must be renewed at close of all evidence. *Williams v State*, 271.

Severance, no abuse of trial court's discretion in refusing to sever. *Id.*

Review of denial of motion for directed verdict, factors on review. *Williams v State*, 352.

Directed verdict, factors on review. *Ferrell v State*, 455.

NEW TRIAL:

When granted, test on review. *Collins v Treadwell*, 100.

Setting aside jury verdict constituted abuse of discretion, order granting new trial reversed. *Id.*

PARENT & CHILD:

Change of custody, material change in circumstances must be shown. *Stone v Steed*, 11.

Chancellor correctly found material change in circumstances which warranted change in custody, chancellor's decision not clearly against preponderance of evidence. *Id.*

PLEADING:

- When pleading is deficient, trial court failed to satisfy requirements for dismissal. *Bethel Baptist Church v. Church Mut. Ins. Co.*, 262.
- Requirements, liberal construction. *Id.*
- Requirements for asserted claims of breach of contract and bad faith met. *Id.*

PROPERTY:

- Finding of adverse possession supported by evidence, no error found. *Fields v. Ginger*, 216.

PUBLIC SERVICE COMMISSION:

- Standard of appellate review. *Bryant v. Arkansas Pub. Serv. Comm'n*, 157.
- Broad discretion. *Id.*
- When Commission's decision must be affirmed. *Id.*
- Courts determine arbitrary abuse of discretion. *Id.*
- When action may be regarded as arbitrary and capricious. *Id.*
- Appellant's burden to prove action was willful and unreasoning. *Id.*
- Finding that disallowed expenses were exceeded by increased depreciation expenses supported by substantial evidence. *Id.*
- Rate regulation, method of valuation. *Id.*
- Incumbent upon Commission to use entire results of audit and revenue-requirement impact on telephone company. *Id.*
- Comparison of figures for revenue excess in audit and stipulation dockets approved. *Id.*
- Stipulation not conditioned on approval of new depreciation rates, no merit in argument that Commission's orders were inconsistent. *Id.*
- Commission's analysis in audit docket was appropriate. *Id.*
- Commission decides credibility of witnesses and weight to be given evidence, Commission did not err in not adopting approach of appellant's witness to depreciation expenses. *Id.*
- Appellant failed to show orders were subject to collateral attack. *Id.*
- Appellant failed to appeal orders entered in stipulation docket. *Id.*
- Commission's findings satisfied requirements of Ark. Code Ann. § 23-2-421(a). *Id.*
- Appellant failed to meet burden of showing that fair-minded persons could not reach Commission's conclusion. *Id.*
- Decision not to disallow \$13 million in expenses supported by sufficient evidence. *Id.*
- Findings sufficient to inform parties and court of basis for orders. *Id.*
- Appellant preserved issues for review. *Id.*
- No merit to appellant's assertion that Commission did not follow its own discovery rule. *Id.*
- Commission properly exercised its authority and discretion in defining scope of docket. *Id.*
- No abuse of discretion in excluding draft-audit report and memorandum, issues not preserved for appeal. *Id.*

REMEDIES:

- Doctrine of election of remedies does not apply to causes of action, no merit found in appellant's challenge to chancellor's ruling. *Jones v. Ray*, 336.

SEARCH & SEIZURE:

- Vehicular search, no proof officer searched vehicle after smelling marijuana but before searching appellant. *Brunson v. State*, 248.
- Incidental to arrest, permissible purposes. *Id.*
- Evidence seized is obtained illegally absent valid arrest and probable cause to make warrantless search. *Id.*
- Review of trial court's denial of motion to suppress, trial court reversed only if ruling clearly against preponderance of evidence. *Williams v. State*, 352.
- Searches outside judicial process are per se unreasonable, requirements of plain-view exception discussed. *Id.*

Initial intrusion into appellant's home lawful, objects seized were not in plain view. *Id.*
Exclusionary rule defined, when evidence received through illegal source is admissible. *Id.*

Independent-source doctrine, ultimate question to be addressed in applying. *Id.*

Independent-source doctrine, two-step analysis for applicability. *Id.*

Independent-source doctrine applied, first step met. *Id.*

Independent-source doctrine, illegal entry affected officer's decision to seek warrant, exclusionary rule mandated exclusion of evidence seized pursuant to warrant. *Id.*

Motion to suppress should have been granted, evidence found in appellant's purse was fruit of the poisonous tree. *Id.*

TORTS:

Joint-enterprise doctrine, requirements of. *Southern Farm Bureau Cas. Ins. Co. v. Pettie*, 79.

Evidence supported finding that no joint enterprise existed, appellee "legally entitled to recover" against driver of vehicle. *Id.*

TRIAL:

Mistrial, extreme remedy. *Williams v. State*, 271.

Closing arguments, leeway given counsel, wide discretion given trial court, no abuse of discretion found. *Id.*

Cross-examination, appellant did not show prejudice from trial court's curtailment of repetitive cross-examination. *Id.*

UNEMPLOYMENT COMPENSATION:

Appeal of Board of Review's determination, factors on review. *White v. Director*, 197.

Board of Review's determination reasonably reached, decision affirmed. *Id.*

Appeal from Board of Review, factors on review. *Brown v. Director*, 205.

Good cause to quit work, taking of steps to prevent continuance of perceived misconduct one element considered. *Id.*

Appellant walked off job without making any effort to discuss his problem with employer, Board's decision supported by substantial evidence. *Id.*

Court declined to apply sanctions for appellee's failure to file record on appeal within 90 days after notice of appeal filed by claimant, court may apply sanctions in future instances. *Id.*

Misconduct sufficient to disqualify individual from receiving benefits, what constitutes misconduct. *Carraro v. Director*, 210.

Review of unemployment compensation cases, Board's decision must be supported by substantial evidence. *Id.*

Board's decision to deny benefits not supported by substantial evidence, case reversed and remanded. *Id.*

VENUE:

Presumption that venue was properly laid. *Lindsey v. State*, 266.

Victim's testimony constituted substantial evidence that venue was properly laid. *Id.*

WITNESSES:

Granting of immunity, burden of proof, factors on review. *Maglothin v. State*, 146.

Transactional and use immunity discussed. *Id.*

Record contained conflicting evidence, trial court's ruling that appellant failed to prove he had any type of immunity not in error. *Id.*

WORDS & PHRASES:

"Injury" and "bodily injury" defined. *Dugan v. Sweetser*, 401.

WORKERS' COMPENSATION:

Constitutional issues must be raised before Commission to preserve them for appeal.

Green v. Smith & Scott Logging, 53.

Commission required to rule on constitutional issues properly before it. *Id.*

- Holding on preservation of constitutional issues applied prospectively, matter remanded to Commission. *Id.*
- Review of Commission's decision, factors on review. *Smith v. Gerber Products*, 57.
- Substantial evidence supported Commission's finding, Commission's denial of benefits for permanent impairment affirmed. *Id.*
- Ark. Code Ann. §11-9-102(5)(F)(ii)(a) dispositive of appellant's claim, appellant not entitled to permanent-partial-wage-loss benefits. *Id.*
- Hernia claim, requirements for compensation. *Darling Store Fixtures v. McDonald*, 60.
- Hernia claim, Commission's finding that appellee met severe-pain requirement was supported by substantial evidence. *Id.*
- Hernia claim, employer's duty. *Id.*
- Hernia claim, physician-attendance requirement did not bar recovery, court cannot be hypertechnical in construing statute. *Id.*
- Hernia claim, claimant need not prove actual attendance by physician within seventy-two-hour period. *Id.*
- Hernia claim, physical-distress requirement met. *Id.*
- Review of Commission's decision, factors on review. *Lytle v. Arkansas Trucking Servs.*, 73.
- Dual-purpose doctrine defined. *Id.*
- "Dual-purpose" trip doctrine, decisive test for applicability. *Id.*
- "Going-and-coming" rule, dual-purpose doctrine exception to rule. *Id.*
- Appellant's side trip substantial deviation from his business trip, substantial evidence supported finding that appellant was not in course of employment when accident occurred. *Id.*
- "Personal-comfort doctrine" defined. *Id.*
- Appellant's deviation substantial, deviation not within bounds of "personal-comfort doctrine". *Id.*
- Challenge to sufficiency of evidence, factors on review. *Pilgrims Pride Corp. v. Caldarrera*, 92.
- Commission to draw inferences when testimony open to interpretation, Commission determines weight and credibility of evidence. *Id.*
- Entitlement to benefits, test for course of employment. *Id.*
- Appellee's actions in employer's best interest, Commission's finding supported by substantial evidence. *Id.*
- Compensation for hernias, complications defined. *Carroll Gen. Hosp. v. Green*, 102.
- Appellee's disability arose from condition "separate and distinct" from hernia injury, compensation for appellee's disability not limited by hernia statute. *Id.*
- Review of Commission's decision, factors on review. *Id.*
- Review of Commission's decision, decision supported by substantial evidence. *Id.*
- Temporary total disability discussed, healing period defined. *Id.*
- Commission's finding supported by substantial evidence, no error found in award of temporary total disability benefits. *Id.*
- Standard of review, substantial evidence defined. *Foxx v. American Transp.*, 115.
- Conflicting medical evidence is question of fact for Commission. *Id.*
- "Anatomical impairment" defined. *Id.*
- Commission's findings blurred distinction between anatomical impairment and wage-loss disability. *Id.*
- Commission may not arbitrarily disregard physician's opinion, matter reversed and remanded. *Id.*
- Review of Commission's decision, factors considered. *Atkins Nursing Home v. Gray*, 125.
- Employer liable for primary injury arising out of course of employment, employer remains liable for recurrence of injury. *Id.*
- Commission concluded appellee sustained recurrence of her previous injury, substantial evidence supported this conclusion. *Id.*
- Act was inapplicable, no error found. *Id.*
- Appellant's argument without merit, appellee not entitled to benefits under the act. *Id.*

- Appellee entitled to temporary total disability benefits, substantial evidence supported Commission's decision. *Id.*
- Wage-loss factor discussed, burden of proof rests with employer. *Cross v Crawford County Memorial Hosp.*, 130.
- No specific findings made as determination of wage-loss disability benefits, contents of specific finding. *Id.*
- No actual offer of employment reflected in record, employer failed to meet its burden. *Id.*
- Commission's basis for denial of wage-loss benefits premature, Commission's denial of benefits reversed. *Id.*
- Review of Commission's decision, factors on review. *Farmland Ins. Co. v Dubois*, 141.
- Appellee's injury caused by specific incident, no requirement that injury be shown to be the major cause of her disability. *Id.*
- Appellee seeking medical benefits and temporary total disability for injury combined with preexisting condition, permanent benefits were not sought. *Id.*
- Appellee's accident was caused by specific incident, aggravation of preexisting injury met requirements for compensable injury. *Id.*
- Review of Commission's decision, factors on review. *Stafford v Arkmo Lumber Co.*, 286.
- Interpretation of medical opinion for the Commission, Commission's findings supported by substantial evidence. *Id.*
- Temporary total disability defined, Commission's determination to deny temporary total disability benefits supported by substantial evidence. *Id.*
- Standard of review. *Estes v Cedar Chems.*, 311.
- Safety violation, Commission's finding that appellant failed to meet burden of proof supported by substantial evidence. *Id.*
- Wage-loss compensation, appellant was given bona fide offer of employment at same wages, not entitled to wage-loss disability benefits. *Id.*
- Standard of review. *Southern Hospitalities v Britain*, 318.
- Compensable injury must be established by objective findings, appellee failed to establish entitlement to compensation. *Id.*
- When employer is responsible for medical expenses. *Id.*
- Commission's decision that employer should bear medical expenses supported by substantial evidence. *Id.*
- Determining sufficiency of evidence on review, when decision of Commission will be reversed. *Weldon v Pierce Bros. Constr.*, 344.
- Recurrence of injury, when liability will be imposed on second carrier. *Id.*
- Basis of Commission's decision not limited to medical evidence, Commission has duty to translate evidence on all issues before it into findings of fact. *Id.*
- Appellant's argument without merit, Commission's finding that incident was recurrence of earlier injury supported by substantial evidence. *Id.*
- No error found in Commission's denial of wage-loss claim, Commission's finding affirmed. *Id.*
- Standard of review. *Hanson v Amfuehl*, 370.
- Commission determines credibility of witnesses and weight to be given testimony. *Id.*
- Physicians' opinion evidence constituted substantial evidence in support of Commission's decision. *Id.*
- Standard of review, substantial evidence defined, factors on review. *Southern Steel & Wire v Kahler*, 376.
- Wage-loss factor defined. *Id.*
- Commission's duty to weigh medical evidence. *Id.*
- Commission's finding that appellee was not properly discharged for misconduct was supported by substantial evidence. *Id.*
- Standard of review, substantial evidence defined. *Dugan v Sweetser*, 401.
- Compensable mental illness or injury, must be caused by physical injury. *Id.*
- Appellant received electrical shock that produced physical injury. *Id.*
- No substantial basis to uphold denial of benefits for psychological problems where proof of physical injury was in medical records. *Id.*

Index to
Acts, Codes, Constitutional
Provisions, Rules, and
Statutes Cited

INDEX TO
ACTS, CODES, CONSTITUTIONAL PROVISIONS,
INSTRUCTIONS, RULES, AND
STATUTES CITED

ACTS:	
Acts by Name:	
Arkansas Employment Security Law	215
Arkansas Workers' Compensation Act	55, 79, 86
Arkansas Workers' Compensation Law	324, 327, 330, 331, 332, 333, 334, 335
Motor Vehicle Safety Responsibility Act	307, 309
Rape Shield Statute	268, 269
Underinsured Motorist Act	84
Uniform Interstate Family Support Act	388
Uninsured Motorist Act	79, 86
Arkansas Acts:	
Act 335 of 1987	80, 88
Act 209 of 1991	80, 88
Act 870 of 1991	70, 72
Act 796 of 1993	126, 127, 129, 139, 319, 324, 327, 330, 331, 333, 334
Act 796 of 1993, § 2	321, 326
Act 796 of 1993, § 35	332
Act 1180 of 1993	391
CODES:	
(See also RULES and STATUTES)	
Arkansas Code Annotated:	
5-1-110	272, 280
5-1-110(a)(2)	279
5-1-111	266, 268
5-1-113	272, 278, 279, 280
5-1-113(1)(B)(i)	279
5-1-113(1)(b)(ii)	279
5-2-403	277
5-2-403(a)(2)	283
5-4-203	152
5-4-301(d)(1)	153
5-4-303	152
5-4-303(f)	150, 152, 153
5-10-102	21
5-11-106	46, 49
5-12-101	19
5-12-102	19, 20
5-12-103	20
5-14-102—5-14-110	269
5-36-101(11)(A)(i)	194
5-36-101(11)(A)(ii)	194
5-36-103(b)(2)(A)	194, 304
5-64-401	262
9-14-210	384, 388
9-14-210(e)(2)	384
9-14-233	73
9-14-236	70, 71, 72
9-17-101	388
11-2-117	314
11-9-102	321, 326, 330
11-9-102(4)	327
11-9-102(5)	123
11-9-102(5)(A)	143, 144, 327
11-9-102(5)(A)(i)	142, 144, 145, 327, 328
11-9-102(5)(A)(ii)	144
11-9-102(5)(D)	318, 321, 327
11-9-102(5)(E)	143, 144, 318, 321
11-9-102(5)(E)(ii)	141, 145
11-9-102(5)(F)	143, 144
11-9-102(5)(F)(i)	141, 145, 322
11-9-102(5)(F)(ii)	59, 141, 145
11-9-102(5)(F)(ii)(a)	58, 60
11-9-102(13)	106
11-9-102(14)	59
11-9-102(14)(A)	145
11-9-102(16)	296, 326, 330
11-9-102(16)(A)	327, 328
11-9-102(16)(A)(i)	318, 321
11-9-102(16)(A)(ii)	330
11-9-104(14)	59
11-9-105(a)	84
11-9-501(a)—(d)	314
11-9-502(b)	348
11-9-503	313
11-9-508—11-9-516	323, 333
11-9-508(a)	298, 323, 332
11-9-508(b)	298
11-9-510	323, 333
11-9-514	297
11-9-514(a)(1)	297, 298

11-9-514(a)(2) 292, 297, 298
 11-9-521 55, 123
 11-9-521(a) 330
 11-9-521(h)(1)(B) 330
 11-9-522 351
 11-9-522(a) 123
 11-9-522(b) 311, 315, 316, 317,
 351, 352
 11-9-522(b)(1) 60
 11-9-522(c) 352, 378
 11-9-522(c)(1) 131, 134, 135, 317
 11-9-522(c)(2) 377, 378
 11-9-522(g)(1)(B) 330
 11-9-523 61, 63, 104, 330
 11-9-523(a) 64, 65
 11-9-523(a)(2) 64
 11-9-523(b)(1) 61, 64, 104, 105
 11-9-704(c) 374
 11-9-704(c)(3) 331
 11-9-1001 139, 331, 332, 334,
 335
 11-10-107(a) 216
 11-10-513(A)(1) 207
 11-10-514(a)(1) 214
 11-10-529(b)(1) 206, 209
 16-42-101 267, 268, 269
 16-42-101(b) 269
 16-56-115 71
 16-89-111(e)(1) 283, 285
 16-90-301—16-90-306 304
 16-90-301 305
 16-90-303(a) 305
 20-76-410 388
 20-77-109 388
 23-2-306—23-2-311 186
 23-2-310 162, 186
 23-2-421(a) 160, 161, 175, 176,
 180
 23-2-422(b) 160, 174
 23-2-423 182
 23-2-423(c)(3) 157, 168
 23-2-423(c)(4) 157, 168
 23-2-423(c)(5) 157, 168
 23-4-103 160, 175
 23-4-104 189
 23-4-406 172
 23-79-104 2
 23-89-209 80, 84, 87, 390,
 391, 392
 23-89-209(a) 88
 27-16-303(a)(1) 51
 27-19-713(f)(1) 307, 309
 28-9-203(c) 2
 United States Code:
 18 U.S.C. § 6002 148, 149, 150

18 U.S.C. § 6003(a) 148, 149
 CONSTITUTIONAL PROVISIONS:
 Arkansas Constitution:
 Art. 7, § 1 55
 United States Constitution:
 Amend. 4 45, 51, 231, 234,
 236, 238, 246, 247,
 248, 250, 251, 252,
 256, 257, 299, 300,
 353, 364
 Amend. 5 98, 149, 301
 Amend. 6 98, 394, 399
 Amend. 14 53, 56, 301
 Double Jeopardy
 Clause 235
 Due Process
 Clause 53, 301
 Equal Protection
 Clause 53
 INSTRUCTIONS:
 Arkansas Model Jury Instructions
 (Criminal):
 AMCI 2d 402 283, 285, 286
 AMCI 2d 403 277, 283, 284
 RULES:
 Arkansas Rules of Appellate
 Procedure (Ark. Code Ann. Court
 Rules [Supp. 1995]):
 Rule 4(a) 109
 Rule 4(c) 109
 Rule 9 109
 Arkansas Rules of Civil
 Procedure (Ark. Code Ann. Court
 Rules [Supp. 1995]):
 A.R.C.P. 5 384, 389
 A.R.C.P. 5(a) 342
 A.R.C.P. 5(b) 388
 A.R.C.P. 8 342
 A.R.C.P. 8(a) 263, 265, 342
 A.R.C.P. 8(f) 342
 A.R.C.P. 12(b)(6) 42, 262, 263, 264
 A.R.C.P. 12(e) 43
 A.R.C.P. 15(b) 336, 338, 342
 A.R.C.P. 37 112
 A.R.C.P. 52(a) 82, 113

A.R.C.P. 56.....	5	A.R.E. 404(2)	14
Arkansas Rules of Criminal Procedure (Ark. Code Ann. Court Rules [Supp. 1995]):		A.R.E. 404(b)	192, 195, 196
A.R.Cr.P. 2.1	232, 236, 238, 240, 241, 249, 254	A.R.E. 608	380, 381, 382
A.R.Cr.P. 2.3	46, 47, 51, 52	A.R.E. 608(b)	380, 381, 382
A.R.Cr.P. 3.1	232, 233, 236, 238, 254	A.R.E. 703	163, 188
A.R.Cr.P. 3.4	254, 255, 258	A.R.E. 801(c)	34
A.R.Cr.P. 4.1	249, 255	A.R.E. 801(d)(2)	22, 35, 36
A.R.Cr.P. 4.1(a)(iii)	51, 258	A.R.E. 802	24, 34, 38
A.R.Cr.P. 4.1(c)	258	A.R.E. 803	36
A.R.Cr.P. 12.1	250, 255	A.R.E. 803(3)	22, 23, 36
A.R.Cr.P. 12.1(d)	258	A.R.E. 803(8)	24, 38, 39
A.R.Cr.P. 14.1	249, 252, 253, 254	A.R.E. 902	24, 38
A.R.Cr.P. 14.1(b)	253, 258	A.R.E. 902(1)	38
A.R.Cr.P. 17.1(d)	66, 68	A.R.E. 902(2)	38
A.R.Cr.P. 19.2	66, 69	A.R.E. 902(3)	38
A.R.Cr.P. 22.1(b)	272, 280	A.R.E. 902(4)	38
A.R.Cr.P. 22.3	393, 394, 397, 398, 399	Rules of the Arkansas Supreme Court and Court of Appeals (Ark. Code Ann. Court Rules [1995]):	
A.R.Cr.P. 28.1	155	Rule 1-2(a)	391
A.R.Cr.P. 28.2(a)	155	Rule 1-2(a)(3)	391
A.R.Cr.P. 28.3(a)	154, 156	Rule 4-2	4
Arkansas Rules of Evidence (Ark. Code Ann. Court Rules [1995]):		Rule 4-2(a)(6)	4
A.R.E. 102	269	Rule 4-2(b)(2)	4
A.R.E. 103	269	Public Serv. Comm'n Rules of Practice and Procedure:	
A.R.E. 103(a)(2)	108, 112, 115, 367, 382	Rule 13.02(a)	184
A.R.E. 401	46, 50	Rule 13.04	185
A.R.E. 403	23, 34, 37, 46, 50	STATUTES:	
A.R.E. 404(1)	14	Rape Shield Statute	267, 268, 269
		Underinsured Motorist Statute	84